



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Agenda

Meeting of July 13, 2005

9:00 a.m., Commission Offices, 242 State Street, Augusta, Maine

ROUTINE BUSINESS

1. Ratification of minutes of the February 17, and March 9, 2005 meetings

OLD BUSINESS

2. Request for Reconsideration by Christopher M. McCarthy

At its May 11, 2005 meeting, the Ethics Commission assessed civil penalties totaling \$8,967.85 against candidate Christopher M. McCarthy for filing the October 27, 2004 and December 14, 2004 campaign finance reports late, and for failing to return \$845.72 in unspent Maine Clean Election Act funds by December 14, 2004. Mr. McCarthy has requested that the Commission reconsider its May 11 determination. *Staff recommendation: the staff recommends not reconsidering the May 11 determination.*

NEW BUSINESS

3. Late Filing Penalty/Hon. Edward R. Dugay

Representative Edward R. Dugay was a traditionally financed candidate for the Legislature in the 2004 elections. Because his opponent participated in the Maine Clean Election Act, Rep. Dugay was required to file up to four "accelerated reports" that notified the Commission whether his opponent was due to receive matching funds. The Commission staff has determined that Rep. Dugay was required to file the 101% Report on October 15, 2004 and an accelerated report on October 21 stating his general election receipts. Because these reports were not filed, his opponent did not receive \$1,191 in matching funds until days before the general election. Rep. Dugay has responded that he acted in good faith and believed his filings were accurate when he submitted them. *Staff recommendation: because a substantial amount of matching funds was delayed, the Commission staff recommends the assessment of a civil penalty of \$10,170 which is one-third of the maximum penalty permitted by the formula in the Election Law. The staff may recommend a reduced penalty if Rep. Dugay provides a more detailed explanation regarding his basis for believing his reports were accurate.*

4. Inquiry by David F. Emery Regarding Exploratory Committee and Permissible Expenditures of Maine Clean Election Act Funds

David F. Emery is considering running for the office of Governor of Maine. He requests guidance from the Commission on four questions: (1) what actions or conditions cause a person who is exploring a possible run for office to be considered an official candidate; (2) can Mr. Emery organize an exploratory committee that would raise and spend funds while maintaining the option of participating in the Maine Clean Election Act (MCEA); (3) can his campaign hire his own polling and analysis firm to provide services to the campaign; and (4) can MCEA funds be used to reimburse a gubernatorial candidate for meals, travel (including out-of-state), and lodging.

5. Final Adoption of Major Substantive Rule Amendments

On April 8, 2005, the Ethics Commission provisionally adopted major substantive amendments to the Commission's Rules. The Legislature enacted Resolve Chapter #111, which authorized the Commission to finally adopt the amendments upon making some further changes to the rule regarding advance purchases of general election goods and services before the primary election. *Staff recommendation: the staff recommends final adoption of the rule amendments after reviewing, in particular, pages 15 and 37 which show in bold the changes requested by the Legislature.*

6. Request for Waiver of Late-Filing Penalty/Debra Hart

Debra Hart is a registered lobbyist for five clients. She was late filing five monthly reports due June 15, 2005. The reports were filed on June 22, after she received a penalty notice from the Commission staff. The total statutory penalty for the five late reports is \$500. Based on the Commission's records, Ms. Hart has never been late filing her reports and typically files the monthly reports two weeks early. In late May, she began undergoing weekly medical treatments at a Boston medical center. *Staff recommendation: because of Ms. Hart's strong record of filing early reports and the mitigating circumstance of her medical treatment, the staff recommends reducing the statutory penalty to \$100.*

7. Referral to Attorney General/Matthew Gagnon

Matthew Gagnon was the Republican candidate for House District #14 in the 2004 elections. On April 8, 2005, the Ethics Commission assessed a total penalty of \$150 for the late filing of his 42-day post-primary and 6-day pre-general reports after considering Mr. Gagnon's request for a waiver of the penalty. On April 12, 2005, the Commission staff sent a formal determination requesting payment within 30 days. Under 21-A M.R.S.A. §1020-A(10), thirty days after issuing a notice of penalty the Commission "shall" report to the Maine State Attorney General the name of any person who has failed to pay the full amount of a civil penalty. On July 6, 2005, the Commission staff sent Mr. Gagnon a final notice that the staff would recommend referring him to the Attorney General for collection of the unpaid penalty. The Commission staff left a message for Mr. Gagnon at his residence. Mr. Gagnon has not responded to any of these communications. *Staff recommendation: the Commission staff recommends referring Mr. Gagnon to the State Attorney General for collection of the civil penalty.*

8. Referral to Attorney General/John Linscott

John Linscott was the Republican candidate for House District #116 in the 2004 elections. On June 8, 2005, the Commission assessed a \$35.72 penalty for violating the Maine Clean Election Act by contributing personal funds to his campaign and spending those funds. On June 8, 2005, the Commission staff sent a formal determination requesting payment within 30 days. Mr. Linscott replied with a letter dated June 14, 2005, in which he stated his intention not to pay the penalty. On July 6, 2005, the Commission staff sent Mr. Linscott a final notice that the staff would recommend referring him to the Attorney General for collection of the unpaid penalty. *Staff recommendation: the Commission staff recommends referring Mr. Linscott to the State Attorney General for collection of the civil penalty*

9. Referral to Attorney General/Arthur Keenan

Arthur Keenan was the Democratic candidate for House District #34 in the 2004 elections. On May 11, 2005, the Commission assessed a \$500 penalty for the late filing of his 42-day post-general election report after considering Mr. Keenan's request for a waiver of the penalty. On May 12, 2005, the Commission staff sent a formal determination requesting payment within 30 days. On July 6, 2005, the Commission staff sent Mr. Keenan and his treasurer, Mary Anne Keenan, a final notice that the staff would recommend referring him to the Attorney General for collection of the unpaid penalty. Mr. Keenan's telephone number has been disconnected, and the Commission director has left a voicemail message with Mary Anne Keenan. Mr. Keenan has not responded to any of these communications. *Staff recommendation: the Commission staff recommends referring Mr. Keenan to the State Attorney General for collection of the civil penalty.*

Other

Miscellaneous as needed.

EXECUTIVE SESSION

If necessary.

ADJOURNMENT

Agenda

Item #1

Minutes of the February 17, 2005 meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Chair James Donnelly; Hon. Jean Ginn Marvin; Hon. Andrew Ketterer.
Staff: Executive Director Jonathan Wayne; Counsel Phyllis Gardiner; Commission
Assistant Nathaniel Brown.

At 9:15 a.m., Chair Donnelly convened the meeting. The Commission considered the following items:

Agenda Item #1 – Ratification of Minutes of October 15, 2004 Meeting

Mr. Ketterer moved, Ms. Ginn Marvin seconded, and the Commission members voted unanimously to accept the minutes as drafted.

Agenda Item #2 – Funding for the Maine Clean Election Act

In preparation for the Ethics Commission's presentation at the Joint Standing Committee on Appropriations and Financial Affairs, the Commission members considered the projected revenues and expenditures of the Maine Clean Election Fund for the 2006 elections, as prepared by the Commission staff. The Commission director outlined the Governor's proposal to transfer \$2.4 million from the General Fund to the Maine Clean Election Fund in the 2005 emergency budget.

Other Item Not on Agenda – Request for Advisory Opinion from the Governor's Office

The Commission members considered a written request for an advisory opinion that was submitted to the Commission after the agenda had been completed. The Commission director stated that the First Lady of Maine, Karen Baldacci, was interested in raising funds so she could host the National Governor's Association Spouses Seminar in Maine. This would involve fund-raising during the legislative session, and current law prohibits Legislators and agents of the Governor from raising funds from lobbyists and their employers during the legislative session. The Director said that he believed the statute applied to campaign contributions only, and not to fundraising for charitable organizations. The Director recommended that Ms. Baldacci be advised that she could raise the funds, and presented a draft advisory opinion to the Commission members.

Ms. Ginn Marvin asked if these funds were for meals and/or lodging for those in attendance. Sarah Gagne-Holmes, Deputy Counsel for the Governor, stated that the spouses seminar would involve sightseeing, programs for the spouses, and workshops on literacy, nutrition and children's issues. She said the money would also be used for speakers to address these issues. She added that any money left over would be donated to

charity. Mr. Ketterer asked if it was part of the Governors Association's summer meeting. Ms. Holmes said she believed that it was.

Mr. Ketterer moved, Ms. Ginn Marvin seconded, and the Commission voted unanimously (3-0) to authorize the advisory opinion drafted by staff.

Agenda Items #6 and #8 – Proposed Amendments to Rules and Candidate Reporting Form

Because of time constraints, the Commission considered items #6 and #8 out of order. The Director said that during the 2004 election cycle, the Commission staff had been making a list of issues and policies that might be appropriate for statutory or rule amendment. In addition, the staff proposed some changes to the candidate campaign finance reporting form. The complete changes proposed by staff were distributed to the Commission members prior to the meeting. The Commission director discussed the following proposed changes:

Chapter 1

- *Section 1 – Definitions.* The staff proposed moving the definitions section of the Commission rules from Chapter 3 to Chapter 1.
- *Section 1 – Definition of Member of Membership Organization.* A proposed rule would define what is a member of a membership organization, based on the federal definition. Mr. Donnelly asked how the proposed definition would apply to organizations such as credit unions. The director replied that if a credit union otherwise met the requirements, and the employees or account holders had a significant financial or organizational attachment to the credit union, they would be considered members. Mr. Donnelly brought up the issue of requests for investigation, and the amount of information that needed to be included in a request. Ms. Ginn Marvin said she thought the person bringing the complaint must identify the source of the information. The Commission members discussed language to be included in the proposed rule amendments regarding these issues.
- *Section 6 – Employment Information of Contributors.* The proposed rule clarified that individuals who give between \$50 and \$100 in seed money contributions are required to report their employer and occupation.
- *Section 6 – Goods and Services Received for a Recount.* Under the proposed rule, goods and services given to a candidate for the purposes of influencing a recount would not be considered a campaign contribution.
- *Section 10 – Independent Expenditure Reports.* The proposed rule summarizes the guidelines adopted by the Commission in September 2004

regarding communications in the last 21 days before an election that clearly identify a candidate.

With regard to voter guides and legislative scorecards, the Director repeated his recommendation from the 2004 meetings that voter guides and legislative scorecards should be considered on a case-by-case basis. Mr. Donnelly disagreed, and suggested that voter guides or legislative scorecards listing more than 25 candidates should be exempted from the 21-day presumption. With no objection of the other Commission members, the director responded that he would publish rules for public comment containing the exemption outlined by the Chair.

Ms. Ginn Marvin recommended that e-mail and computer communications in the 21 days before an election should be covered by the 21-day presumption.

Mr. Donnelly suggested that if an organization distributing copies of literature relating to a number of candidate elections should be permitted to allocate the cost evenly among the candidates if the organization cannot determine how many copies of the communication were distributed in each race.

- *Section 12 – Contributions During a Legislative Session.* Under the proposed rule, lobbyists would be prohibited from making seed money contributions to Maine Clean Election Act candidates during the legislative session. Also, PACs closely associated with a Legislator, such as a leadership PAC or the PAC of a legislative caucus, could not receive contributions during a legislative session.

Chapter 3

- *Section 2 – Declaration of Intent.* Under the proposed rule, a candidate's declaration of intent would not need to be notarized.
- *Section 2 – Procedures for Qualifying Contributions.* The director proposed rules regarding the acceptability of qualifying contributions drawn from business accounts, or donated by multiple members of a family or through money orders.
- *Section 5 – Disbursements With No Campaign Value.* Under the proposed rule, if the campaign of a traditionally financed candidate receives a loan and then repays the loan, only the unpaid amount would be considered as a receipt for the general election for matching funds purposes.
- *Section 6 – Thank You Parties and Notes.* The proposed rule places maximum amounts of Maine Clean Election Act funds that candidates

may spend on post-election parties, notes, and advertisements to thank supporters.

- *Section 7 – Documentation Requirement for Salaries and Compensation.* Under the proposed rule, if a Maine Clean Election Act candidate spent more than \$500 on salaries and compensation, the candidate would be required to maintain a special record that would include a monthly description of goods and services provided.
- *Section 8 – Write-In Candidates.* The proposed rule states that write-in candidates cannot qualify for public funds under the Maine Clean Election Act (MCEA) unless the candidate becomes the nominee of the party. The rule also proposes that a participating candidate with only write-in opponents would be considered in a contested election if the candidate can demonstrate that a write-in opponent has raised or spent substantial amounts of money. Mr. Donnelly asked if someone was not a MCEA candidate for the primary, could they register as a MCEA candidate in the general election. The Director replied the Legislature had prohibited participation in that circumstance.

Mr. Ketterer moved, Ms. Ginn Marvin seconded, and the Commission voted unanimously (3-0) to adopt the proposed amendments for public comment with the changes requested by the Commission members.

Agenda Item #7 – Dates of March Meeting and Public Hearing for Rule-Making

The Commission decided to next consider regular business on March 9th, and to hold a public hearing on the proposed rule amendments on March 18th.

Due to time constraints, there was no further business, and the Commission adjourned.

Dated: June __, 2005

Respectfully submitted,

Jonathan Wayne
Executive Director

Minutes of the March 9, 2005 meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Chair pro tempore Andrew Ketterer; Hon. Terrance MacTaggart; Hon. James Donnelly (by telephone); Hon. Jean Ginn Marvin (by telephone). Staff: Executive Director Jonathan Wayne; Counsel Phyllis Gardiner.

At 10:15 a.m., Andrew Ketterer convened the meeting. Because of a snow storm, the Commission's Chair, James Donnelly, was unable to attend the meeting in Augusta and participated by telephone. Several agenda items were postponed until a later meeting because respondents were unable to attend. The Commission considered the following items:

Agenda Item #1 – Ratification of minutes of October 28, 2004 meeting

Dr. MacTaggart moved, Mr. Donnelly seconded, and the Commission voted unanimously (4-0) to adopt the draft minutes.

Agenda Item #16 – Late Filing Penalty/Penobscot County Democratic Committee

The Penobscot County Democratic Committee was 83 days late in filing a 6-day pre-general election report due October 27, 2004. The committee filed the report on January 18, 2005 after receiving a request by the Ethics Commission staff. The maximum amount of a late-filing penalty against a town party committee is \$500. Otherwise, the preliminary penalty amount would be \$3,390.55, based upon the formula in the Election Law. Through a February 8, 2005 letter by its treasurer Kurt A. Keef, the committee requested a waiver of the \$500 penalty.

Mr. Keef addressed the Commission members. He explained that he knew he had to file two reports every year, and was unaware that during election years a third report was required six days before the election. When he was notified of the situation, he promptly filed the report. The Commission director stated that the Election Law required the state party committees to inform local and county committees about the filing deadlines and requirements. The director said that in future elections the staff should take a more hands on role in order to prevent more situations like this one. He recommended that the Commission assess the \$500 penalty provided in statute. Ms. Ginn Marvin asked for more information about the \$500 maximum. The director explained how the statutory penalty formula operated, and then explained that the law said that the penalty for a late filing for a municipal or county party committee cannot exceed \$500.

Ms. Ginn Marvin moved, Dr. MacTaggart seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation and to assess a \$500 penalty.

Agenda Item # 18 – Late Independent Expenditure and 24-Hour Reports/Lincoln County Democratic Committee

The Lincoln County Democratic Committee made independent expenditures dated October 14 -21, 2004 totaling \$7,104.86, and disclosed them in a report on October 27. The Election Law and Commission Rules require that independent expenditures greater than \$250 per candidate be filed within 24 hours. Because the report was filed late, some opposing candidates received matching funds late.

In addition, county party committees are required to file a 24-Hour Report within 24 hours of making an expenditure of \$1,000 or more. The Lincoln County Democratic Committee reported an October 25 expenditure of \$1,000 to the Waldoboro Post Office for postage one day late on October 27. It reported an October 26 expenditure of \$3,750 to Clear Channel Radio one day late on October 28. Treasurer Joan D. Kierstead wrote a letter requesting that the penalties be waived.

Tim Nason, chair of the Lincoln County Democratic Committee, stated that with regards to the independent expenditure reports the treasurer was unaware of the filing requirement until after the report was due. He said that the state party had not told the committee about the requirement until it was too late. He described an e-mail sent by the state party's former executive director to all county chairs about the various filing requirements. Mr. Nason stated that the e-mail was not sent to any county treasurers. The committee's former chair received the e-mail, notified Ms. Kierstead as to the requirements, after which she promptly filed the independent expenditure report. With regards to the late 24-hour reports, Mr. Nason said that Ms. Kierstead lived in Jefferson and did not have access to a fax machine. He defended her efforts to comply with the law once she knew what it was, expressed surprise that the treasurer was not informed about the filing requirements, and that he felt this was a mitigating circumstance.

The Commission director recommended that the Commission assess the routine statutory penalty of \$426.49 for the late independent expenditure report and an additional penalty of \$500 because the committee's late independent expenditure report delayed the payment of matching funds to the opposing candidates. The additional \$500 penalty was consistent with an earlier Commission ruling made in November 2004 against the Citizens for Responsibility PAC, which committed a similar violation. The director stressed the importance that the penalty reflect the seriousness of delayed matching funds. In addition, the staff recommended the statutory penalty of \$47.50 for the two late 24-hour reports

Mr. Ketterer said that independent expenditure reports are taken seriously by the Commission, and that one of the most common complaints was that matching funds were released at the last minute and that therefore the money could not be used effectively. Mr. Ketterer also expressed his understanding of the difficulties in ensuring that county committee staff understand all the relevant information.

Mr. Donnelly moved, Dr. MacTaggart seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation and to assess the statutory penalty of \$426.29 for the late independent expenditure report and the additional penalty of \$500 for violating the Commission rules by filing the report late and delaying the payment of matching funds.

Ms. Ginn Marvin moved, Dr. MacTaggart seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation and to assess the statutory penalty of \$47.50 for the late 24-Hour Reports. Mr. Nason said that there were training seminars being planned to prevent this mistake from happening in the future.

Agenda Item #2 – Request Regarding 2002 Report by People for a Strong Maine Economy

The Commission director said that Richard Pelletier had submitted a spreadsheet containing the names of election-day workers which had been omitted from a December 2002 campaign finance report. The director said that he would review the information to make sure it complied with reporting requirements.

Agenda Item #3 – Policy Issue: Last Minute Expenditures

The Commission director discussed the issue that political action committees (PACs) and party committees filed their independent expenditure reports so close to the general election that matching funds were released too late to be helpful for the candidates receiving them. He reported that 70 independent expenditure reports were filed with the Commission for the 2004 general election, and of those 58 were filed within the last eight days of the election.

The director explained that while there were legitimate reasons for filing independent expenditure reports late, there was growing concern among candidates that the timing of these reports was deliberate. He said that in future elections the staff would focus more attention on educating PACs and party committees that an obligation counts as an expenditure. The director also mentioned the possibility of changing the independent expenditure rules to prevent last-minute expenditures, but that it was difficult to make such a change constitutionally. He said that he did not think it was possible to require PACs and party committees to file independent expenditure reports by a certain deadline. Another concept was for the Commission to distribute public funds based on projected expenditures, but that idea was not attractive because the amount reported and the amount spent would be different, which would create problems in giving out the correct amount of matching funds. He stated that the staff had considered requiring PACs and party committees filing independent expenditure reports in the last week before the election to answer supplemental questions to verify that the reports were filed on time.

Mr. Ketterer said this was a tough issue. He said that many groups feel that there is an advantage in spending money late in the election. He also stated that he thought most people do not understand that an obligation counts as an expenditure. Mr. Ketterer thought the seven-day proposal was attractive, because it would probably generate some answers that would be helpful for the Commission. Ms. Ginn Marvin agreed that people spend money at the last minute on purpose. Dr. MacTaggart also agreed that these expenditures do not happen by accident, and that future education would be a good idea. Ms. Gardiner expressed concern over defending a legal requirement requiring PACs and party committees to spend their money by the eighth day before the election. She said that having a different reporting requirement within those last 8 days would work better. Mr. Ketterer said that he did not think that requiring committees candidates to provide supplemental information in the last seven days before the election would violate the first amendment. Ms. Gardiner agreed. The director indicated that this change could be made by rule-making or through a statutory change. The Commission members requested that the director publish the proposed requirement for public comment.

The Commission Director asked the Commission members how they wished to proceed regarding the reports filed by the SCICOM political action committee, the House Democratic Campaign Committee, and the Maine Democratic Party. The Commission members requested that they be scheduled for the next Commission meeting.

Agenda Item #4 – Proposed Changes to Commission Bill

The Commission director stated that the Legislature had not returned the Commission's bill for red-lining, and he wished to discuss two potential insertions. One change was to permit the Commission to amend its candidate campaign finance reporting form through a routine technical rule-making. This would require public comment but not the submission of the changes to the Legislature. The Commission approved of making changes to the forms through routine technical rule amendments. The director proposed for discussion an insertion to the Maine Clean Election Act explicitly authorizing the Commission to assess penalties against individuals who were responsible for the violations by a PAC or party committee. Mr. Donnelly said that while he wanted to hold people accountable, he did not want to scare people off from participating. Mr. Ketterer said that he was also concerned that penalizing individuals could discourage participation. The Commission director withdrew the proposal.

Agenda Item #5 – Proposed Changes to Expenditure Guidelines

The Commission director stated that the staff proposed making changes to the official expenditure guidelines for MCEA candidates in the 2006 elections. Under these amended guidelines, Maine Clean Election Act candidates could not use public funds to: purchase accessories for their vehicles, make charitable contributions, pay civil penalties to the Commission, buy dinners for the candidate and the spouse, entry fees for events unless the event benefited the candidate's campaign. The Commission didn't have any objections to the new language for the guidelines.

Other

Mr. Ketterer said that other items on the agenda were tabled due to the inclement weather, and that the Commission would now consider other items not listed on the agenda.

The Commission director stated that the Office of the Governor had received a list of three names to fill the position on the Commission formerly occupied by Mavourneen Thompson.

The Commission director mentioned that Sen. Kenneth T. Gagnon had introduced legislation limiting the political activity of members of the Ethics Commission. Mr. Donnelly said that it was important that the bill clearly state what a Commission member can and cannot do. He also thought that this bill might limit future choices as to who would be willing to serve on the Commission. Ms. Ginn Marvin expressed her disagreement with restricting political activity in federal races. She said she understood that limiting the Commission members' political involvement in House, Senate and gubernatorial races in Maine was important, but she did not believe restrictions in other election races were necessary. Mr. Ketterer raised the question of whether he could support candidates for the office of Attorney General in other states, and whether he would be restricted in fundraising or supporting those candidates. Dr. MacTaggart stated that he was against limiting the ability to engage in political activity that did not create a conflict of interest. Mr. Ketterer and Ms. Ginn Marvin stated that if the bill passed in its current form, they would consider resigning from the Commission. Mr. Donnelly suggested proposing language that would be consistent with the intent of the bill and that would address the Commission members' concerns. The Commission decided that the director should draft a proposed amendment to the bill, and speak to former Commission member David Ott about proposing the amendment.

There being no further business, the Commission adjourned.

Dated: June ___, 2005

Respectfully submitted,

Jonathan Wayne
Executive Director

Agenda Item #2



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: July 5, 2005

Re: Christopher M. McCarthy's Request for Reconsideration

Background

Christopher M. McCarthy was an unenrolled candidate for the Maine House of Representatives in 2004. On June 7, 2004, he received \$4,031 in public funds under the Maine Clean Election Act (MCEA). He was required to file campaign finance reports on October 27, 2004 and December 14, 2004, which should have itemized his MCEA expenditures. He filed neither report. Mr. McCarthy filed a combined report covering both periods on January 12, 2005 – only after the Commission staff recommended that he be referred to the Attorney General's Office for criminal prosecution.

After the election, Mr. McCarthy had \$845.72 in unspent MCEA funds, which he was required to return to the Ethics Commission on December 14, 2004. In spite of a specific written request for the unspent funds in a December 2, 2004 form memo and in subsequent requests by letter, e-mail, and phone message, he did not return the funds until May 10, 2005 – the day before the Commission met to consider his matter.

The Commission's May 11, 2005 Determination

At the Commission meeting on May 11, 2005, Mr. McCarthy requested a waiver of the penalties. Nevertheless, the Commission assessed three penalties totaling \$8,967.85:

- a penalty of \$3,104.64 for filing the 6-day pre-election report due October 27, 2004 seventy-seven days late;
- a penalty of \$863.21 for filing the 42-day post-election report due December 14, 2004 twenty-nine days late; and
- a penalty of \$5,000 for failing to return the \$845.72 in unspent Maine Clean Election Act funds by December 14, 2004.

Mr. McCarthy requested reconsideration of the penalties through a June 1 letter and through an appearance at the June 8 meeting. The members decided to table the matter until the July 13 meeting so that the full Commission could consider the matter.

Procedural Issues Regarding Reconsideration

The Commission's Rules are silent regarding reconsideration. You have the discretion to reconsider your May 11 determination, but you are under no obligation to do so. The Commission has entertained reconsideration requests before and has, on rare occasions, granted them.

In many courts and administrative agencies, reconsideration is primarily granted if there is evidence which could not have been presented to the court or agency when it made its original decision. (For example, Rule 7(b)(5) of the Maine Rules of Civil Procedures states that: "[m]otions for reconsideration of an order shall not be filed unless required to bring to the court's attention an error, omission or new material that could not previously have been presented.") You may, however, grant reconsideration for reasons other than new evidence that wasn't previously available. For example, some agencies

allow reconsideration as a means to correct a decision believed to be in error and not intended by the agency, or to address significant changes in factors or circumstances relied upon by the agency in making the initial decision.

The Commission is not bound by Robert's Rules of Order, but may choose a similar policy on reconsideration in this case. Under Robert's Rules, the Commission could only reconsider its May 11 determination if a member of the majority of the May 11 vote moved to reconsider.

After consulting with Commission Counsel Phyllis Gardiner, I suggest looking at the candidate's request as a two-step process: first, you would decide whether or not to reconsider the May 11 determination. If you decide in favor of reconsidering, the May 11 decision would be considered vacated, and the matter would be re-opened for a new determination.

Arguments Against Granting Reconsideration

Argument #1. The Ethics Commission staff agrees wholeheartedly with the comments expressed by member Drew Ketterer at the May 11 meeting. The Commission now distributes \$2 to \$3 million of public funds every election year – based primarily on honest reporting by candidates and others. Mr. McCarthy committed a serious breach of public trust by not accounting for how he spent \$4,031 in public funds in campaign finance reports due in October and December 2004, and by not promptly returning \$845.72 in unspent public funds. A substantial penalty is warranted in this case to demonstrate that his behavior is completely unacceptable, and that the Commission will

safeguard the public funds voters charged the Commission with administering under the MCEA.

Argument #2. Reconsideration should be granted only rarely. Mr. McCarthy had a full opportunity to present his case at the May 11 meeting even if he did not take full advantage of it. The only new evidence which Mr. McCarthy presented at the June 8 meeting related to his decision not to deposit his MCEA funds in a bank account. That issue is not directly related to the violations for which the candidate was penalized. Reconsidering a penalty could encourage a perception that the amounts of the Commission's penalties are subject to change.

Arguments in Favor of Granting Reconsideration

Argument #1. At the meeting, Mr. McCarthy hinted that aspects of his personal life contributed to his unresponsiveness, but he stated he was reluctant to discuss them publicly. He may have been reluctant because he had been contacted the previous day by a news reporter and on the morning of the May 11 meeting there was a news story about him on the front page of the Lewiston Sun-Journal. If Mr. McCarthy now would like to be more forthcoming about his personal matters, the Commission may wish to consider any new information.

Argument #2. The civil penalties assessed by the Commission should be proportionate to the violation. The total of the penalties assessed against Mr. McCarthy (\$8,967.85) is among the largest the Commission has assessed in the last three election cycles. Mr. McCarthy's \$5,000 penalty for not returning unspent MCEA funds on time exceeds the total amount of public funds distributed to him for his campaign. While the

facts of this case are disturbing, the Commission may not wish to assess a very large penalty amount which could have the effect of increasing future penalties for more serious misconduct by other candidates.

Attachments

Although it may not be necessary for you to revisit all of the materials, I have attached:

- an unofficial transcript of your consideration of Mr. McCarthy's matter at the May 11, 2005 meeting;
- an audio recording on CD of the relevant portions of the May 11 and June 8 meetings;
- Mr. McCarthy's June 1 letter requesting reconsideration;
- invoices and other documentation of Mr. McCarthy's expenditures;
- a two-page background memo that I drafted on May 5, 2005 (*before* Mr. McCarthy returned the \$845.72 in unspent funds); and
- all correspondence and legal materials relating to this matter, including the candidate's January 12, 2005 campaign finance report.

Staff Recommendation

The Commission staff is ambivalent about Mr. McCarthy's request for reconsideration. The assessed penalties were higher than the staff recommended at the beginning of the May 10 meeting. Taking all factors into consideration, however, the staff does not recommend reconsideration because it agrees with the rationale of safeguarding public funds and because the amount is fair in light of Mr. McCarthy's missed deadlines and extreme unresponsiveness.

Unofficial Transcript of Ethics Commission's Consideration**Enforcement Proceeding against Christopher McCarthy****May 11, 2005 Meeting, Agenda Item #13**

James Donnelly: The next item on the agenda is Item #13, Christopher M. McCarthy, a referral to the Attorney General's office. Mr. McCarthy is here with us. Jonathan, why don't you fill us in and then Mr. McCarthy can make his presentation.

Jonathan Wayne: The staff recommendation has changed because Mr. McCarthy responded yesterday by coming into our office. The background is that Mr. McCarthy was a candidate for the Maine House of Representatives in last year's election. He was not enrolled in any party. He received \$4,031 in public dollars on June 7th, and then as a general election candidate he was required to file two campaign finance reports—one on October 27 and one on December 14. He didn't file either of those reports even though we had sent reminders to his home. Then, after the deadlines, when he was a non-filer we sent him a notice, the statutorily required 3-day notice, which says: you just missed a deadline and there could be a penalty.

We didn't have any response from him on those letters, so in December and January we sent him four more letters, saying that he was going to be referred to the Attorney General's office because not filing reports is a Class E crime. On January 12, the day of your meeting where he would have been referred to the AG's office, we received a fax

copy of his campaign finance report. After we received the report, we treated that as a late filing of both the October and December reports, because the January report had activity that should have been reported in October and December. On March 29th, we sent him two certified envelopes that contained our standard penalty notice and that explained to him that the statutory penalty for the late October report was \$3,104.64 and the statutory penalty for the December 14 report was \$863.21, and the total of those two amounts was \$3,967.85. That is really what is at issue today: what should the late filing penalty be? There was also another matter which was that Mr. McCarthy had \$845 in unspent public funds which he was required to return to us back in December and which he never did. He wrote a check for that amount yesterday so that's now off the table. The staff is gratified that Mr. McCarthy has come forward now and wants to resolve all these matters, but there was a period of six months when he didn't explain to the State how he spent those \$4,000 in public funds, and we tried everything we could to get his attention. We sent him almost ten letters, two e-mails, several phone calls to his employer (we didn't have a working phone number for his residency). He is here today and we are glad he's being cooperative and I don't want to be too hard on him, but I want the Commission members to know that we tried very diligently to get him to respond. Mr. McCarthy is here to request a reduction in the statutory penalties for those two late filings, which again is \$3,967.85.

James Donnelly: Any questions for Jonathan? [NOTE: NO QUESTIONS]

James Donnelly: Would you please state your name for the record?

Christopher M. McCarthy: Christopher Mark McCarthy

James Donnelly: Thank you

Christopher M. McCarthy: I really don't have anything in lieu of a good excuse per se. I had a lot of personal issues going on. I'm at this point trying to climb back out of that hole. I don't expect per se any leniency, it would be nice, I feel I should ask, but again the office did a wonderful job in trying to contact me. I just pretty much went into avoidance of a few things. I don't want to take up your time nor do I feel like I need to bring up my personal life and the things that have gone on there unless you feel they are germane to this. I have no really good thing for you as far as to why I shouldn't have done it, because I should have done it, and I know this, and rather then take up your time... If I had something good to say that was a legitimate reason why I didn't do it, I would bring it up. I was just remiss in this and a few things and I'm trying to make it better now. So, I'm willing to pay any fines. It may take a little time depending on the size of the amount, but I'm willing to try and take care of this.

James Donnelly: Thank you for your succinctness and taking ownership of the issue.

Christopher M. McCarthy: Six months late, but... .

James Donnelly: Nonetheless. Mindful of Jonathan's comments, we're glad you are here.

Christopher M. McCarthy: As am I, oddly enough.

James Donnelly: Are there any questions for Mr. McCarthy?

Andrew Ketterer: Yeah, I have some.

James Donnelly: Drew.

Andrew Ketterer: Thanks. Tell me this: why didn't you just—not so far as it relates to the filing of the reports—but why didn't you just send the public funds back?

Christopher M. McCarthy: It's not even a case of not doing anything. When I originally got the check, I cashed it and had the cash in an old checkbox—and I can bring in people to testify to that—and then paid for things as I went. I kept saying that I would come to Augusta and say: "You know, I need to get that done, I'm going to schedule a time and take care of that," and then it would just get pushed off. But the money had been sitting—actually I must have missed a couple of receipts, it was \$600 something—in my house for months, and I brought the cash up here and ended up giving a check. There was not misappropriation per se, just negligence.

Andrew Ketterer: So it was converted to cash, back when?

Christopher M. McCarthy: Within a couple days of receiving the funds. I had no treasurer, I had no party to talk to, so it was just me talking to other people I knew in the political realm and going on from there.

Andrew Ketterer: How did the funds get converted from cash back into a check?

Christopher M. McCarthy: I actually brought the cash up here yesterday and had a checkbook with me in the car. I ended up writing a check and then depositing the money into my account.

Andrew Ketterer: Was that your committee account or a personal checking account?

Christopher M. McCarthy: My personal account.

Andrew Ketterer: You may want to consult a lawyer before answering any more questions because we are tape recording this and your 5th Amendment rights to remain silent may be implicated by these questions. So, you may want to get a continuance and speak to a lawyer, because it seems to me that if you cashed that check and had those funds, then used them for whatever purpose, and then put those funds into your own personal account, that is a misappropriation of public funds which is not an authorized

expenditure, and you can't do that. We are talking about a civil penalty here, but it sounds like there may be a sanction from the criminal law for what you did as well.

Christopher M. McCarthy: Well no, the funds hadn't gone into anything. It's always been liquid cash, and then yesterday I just paid the funds back, so I don't see where the misappropriation would be, because it's never been prior to this point.

Andrew Ketterer: Well, like I said you may want to talk to a lawyer before you answer any more questions because it seems to me that your testimony was that you put the cash in your personal account and then wrote a check to the Commission.

Christopher M. McCarthy: Other way around. I actually had the cash here. They didn't know how to take the cash, and I said that if it was easier I would write you a check right now rather than give you the lump sum. They said they would take the check so I wrote them the check. Then I'm going to put the cash into my account.

Andrew Ketterer: Well, I guess that explains it. I don't have any more questions.

James Donnelly: Are there any more questions? [NOTE: NO QUESTIONS] Thank you for your time today. Is there a motion? Is there a staff recommendation?

Jonathan Wayne: The staff had a recommendation for referral of Mr. McCarthy to the Attorney General's Office for collection of the \$845.72 repayment of public funds and

\$3,967.85 in late filing penalties, and that the Commission assess an additional penalty of \$1,000 for his failure to repay the public funds. The staff—I—am withdrawing the \$1,000 penalty for failure to repay the public funds because we have received those funds. I guess if you wanted to, you could move forward with that penalty because there was a violation. They should have been returned in December, and we didn't get them until now, but we do have them now. At the time, I wasn't really expecting Mr. McCarthy to be here today, so I was recommending that this be viewed as a penalty that was 30 days overdue and that should be referred to the Attorney General for collection of the full amount. That was what the recommendation was.

James Donnelly: It seems to me the motion is on the penalty, that the public funds have been repaid. There is a matter besides from that Commissioner Ketterer picked up on. It seems like the late filing penalty—we can break this into a few pieces or do it as one motion. It would seem to me that the penalty for late filing is here without regard to any other issues. Perhaps we should have that discussion first, and then do the other pieces if we so chose. Phyllis?

Phyllis Gardiner: Point of clarification. You take your vote on what the penalty is and the candidate has 30 days to pay. There is nothing to refer to the AG's office until the 30 days required to pay has been up. There have been occasions where you have voted to impose a penalty and refer if the penalty isn't paid in 30 days. [The remaining comments are inaudible]

Jonathan Wayne: One thing I would appreciate some instruction on is if Mr. McCarthy requests a payment plan, whether you would entertain that or not, or whether you would insist on the statutory requirement that it is paid in 30 days.

James Donnelly: What we have done in the past, Mike, is that we have had some folks come up and they've had a huge penalty. They say look, I want to live up to my obligations, but there is no way, I'm not a person of means, I can't write a check for \$10,000, but if you'll accept payments I know I can do X. We've accepted some of those and some we have not. The payment plan is worked out for the amount owed each month until paid. That agreement is only so long as they pay on the date they are due—as soon as they go 30 days beyond, the second part of that agreement is referral to the AG's office, it doesn't come back to us.

Michael Bigos: Are we consistent with the statute by saying we are going to fine you X dollars on these multiple dates, and each of those payments are due within 30 days of those multiple dates?

James Donnelly: I think we actually say we assess you the penalty of the X dollars to be paid in installments. We are not assigning different penalties.

Michael Bigos: The statute doesn't specifically allow us to do payment plans, does it?

Phyllis Gardiner: No, but the agency must deal with reality, and the agency has the authority to make every effort to collect the penalty, and if the Commission determines a payment plan is the most practical way of obtaining the penalty, then the Commission can do so. You would vote to impose the penalty, and then you would be giving direction to staff to work out the payment plan, so you don't have to vote for the penalty to be in sections. The staff would be responsible to find a way to collect the penalty and keep track of it.

James Donnelly: Probably the grey area is when there is no payment within the 30 days. Excellent point.

Michael Bigos: I have a couple more questions, one for Phyllis and one for Jonathan. So if we vote on this, does it have the effect of a final judgment?

Phyllis Gardiner: If you vote to impose a penalty, and Mr. McCarthy is willing to pay, and pays the penalty, then there is nothing our office needs to do. If he didn't pay within the 30 days, as any agreement is conditional on him meeting his terms, then there would be something for us to follow up on. We'd actually have to file a separate action with the District Court in Kennebec County to collect the penalty.

Andrew Ketterer: But that's part of the collection process, not part of the final judgment.

Michael Bigos: That makes perfect sense. Jonathan, does he have to file any more finance reports?

Jonathan Wayne: No.

Michael Bigos: Given the fact he has paid it back, he's all set?

Jonathan Wayne: Yes.

Michael Bigos: That's all. Actually I do have a third question. In light of the fact that he has paid back the \$845.72, what is the range of penalty options that we would consider?

Jonathan Wayne: There actually are a range of options that you have, including if you thought it was intentional violation of the Act, I suppose, you could even view it as a criminal violation. The civil penalty is between \$0 and \$10,000 for failing to return the unspent public funds by the required deadline, which was back in December. I chose \$1,000, honestly, to get Mr. McCarthy's attention, but you can go higher, view it as a criminal matter, or you could not take any action on it.

James Donnelly: Any other questions for Phyllis or for Jonathan? For Nathaniel?

[NOTE: NO QUESTIONS]

Andrew Ketterer: Are you looking for a motion?

James Donnelly: I was just about to move to that.

Andrew Ketterer: I move that we consider doing these in installments, and the first motion that I would make is to impose the staff recommendation, in consideration of failing to file and filing late, in the amount of \$3,967.85.

Jean Ginn Marvin: I'll second that.

James Donnelly: Any discussion on the motion? [NOTE: The Commission voted unanimously to adopt the motion]

Andrew Ketterer: I'd like to move a penalty for the wrongful withholding of public funds in the amount of \$5,000 on top of the \$3,967.85 but in consideration of the fact that Mr. McCarthy was kind enough to come in and speak with us, and give candid responses, and perhaps waive his 5th Amendment rights to remain silent. If there is a second for the motion I would like to explain my reasoning behind the motion.

Michael Bigos: I do want to hear why, so I second the motion.

Andrew Ketterer: I think that part of our most important work here is to safeguard public funds. We administer millions in dollars of public funds. We really depend on the good faith of the people who come before us: the people who were kind enough to run for

the House or Senate or for the Governor's position. But I think that it is wrong to have a system where someone says, "I'm going to wrongfully withhold the money, I'm not going to return the money, I'm not going to answer your letters, I'm not going to answer your e-mails, I'm not going to return your phone calls, but I'll tell you what—I'll give you that money back when I decide to give it back to you. It could be February (couple months late) it could be March, could be April, could be never—whenever I decide to give those public funds back."

If someone reads about it in the paper or hears about it, that's one thing. But if you are a Commissioner who is the guardian of those funds and charged with the ethical responsibility to look after those funds and you say: "Well, as long as you give it back eventually, that's okay with us. You can keep it, you can pay an electrical bill with it, replace it with cash and you can keep it in a cigar box—that's okay with us. Whatever you want to do with public funds that the taxpayers have to pay, that's okay as long as you eventually give it back to us. No interest, no penalty, it's an interest-free loan because you agreed to be a candidate." I think that that is clearly and fundamentally wrong to do that, and if no additional sanction is imposed—I wouldn't say this frequently—but I think it would be close to a dereliction of our duty as commissioners. It's clearly and plainly wrong.

Fortunately we don't have this situation arise very often, but we have candidates who win and candidates who lose who plan trips to climates warmer than Maine, and they figure out the math and they write the check from their campaign account. It goes back to the

treasurer and it gets put to whatever public uses the Legislature and the Governor have in mind for it. All those other people do that, and this candidate didn't want to do that, was unable to do that, had personal difficulties, I recognize all that. But I think that if we just say well that's a \$1,000 fine you can keep the money as long as you want, I just think that is very, very wrong. There is no one else in Maine charged with safe guarding those funds other than us. If this was a traditionally funded campaign, and he had X amount of days to get rid of the surplus funds, then that would be a very different story. Those are not public funds. These are taxpayers dollars and we have a real responsibility and a fine of \$2,500 or \$3,000 completely diminishes the enormous responsibility we are charged with and I wouldn't support anything less than \$5,000 and I hope that others members of the Commission feel as strongly as I do about our enormous responsibility.

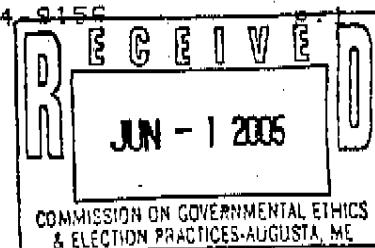
James Donnelly: Any other questions or discussion on the motion?

[NOTE: There were none. The Commission voted unanimously to adopt the motion.]

Jun 01 05 06:18p

Jill LeBel

207-784-9156



Dear Jonathan Wayne,

I would like the opportunity to address the commission again. I feel that I had talked to you in some depth, and shown that I was earnest in my wanting to make amends for being late. I don't think I conveyed that to the commission. I felt that having explained myself to you, your recommendation to the commission would reflect our conversation and I wouldn't have to go into greater detail. I feel that by not saying more about my circumstances the members filled in the blanks with the worse possible answers. Nor did I want my personal life on the front page of the local paper; that has happened twice. I understand that the commission is well within their boundaries to impose such an amount, but it seems excessive from what I can see. I did not misuse the funds in any way. I was given an absolute deadline on 2 occasions and met both. I haven't committed any crimes, yet my fine is more than that of many felonies. Several people in the political arena have come forward with stories of reduced fines and how disproportionate my case seems. Receiving a fine of \$9,000 for being late in returning \$800, I can only assume that I presented myself incorrectly to the committee members. I would like the chance to be more open; this is my first campaign and I have no political party to fall back on, so I make mistakes. It won't cost the committee anything to hear me, but it could change my life.

Respectfully,



Turner
Publishing
INCORPORATED

☐ NEW CLIENT

ADVERTISING AGREEMENT

Company: McCarthy, Chris
Contact: Chris McCarthy
Street: 10 Fairlawn Ave
Town: Leicester State: ME Zip: 04240
Phone (207) 783-2511
Fax: () 240-0911
Email: _____
Billing Address: _____

Today's Date: 10-23-04 Start Date: Nov
No. of Months: (1) Ad Size: 1/4 pg
Guaranteed Placement: _____ Color Charge: _____
Rate: \$ 16 per column inch ☐ CO-OP
Cost Per Month: \$2040 Total Cost: \$2040
Amount Paid: \$2040 Check #: _____
Balance Due: \$0
Special billing instructions: _____

Check papers to run: _____

Total No. of Papers: 1

<input type="checkbox"/> Good News Gazette	<input type="checkbox"/> Auburn Highlights
<input type="checkbox"/> Moose Prints	<input checked="" type="checkbox"/> The Lewiston Leader
<input type="checkbox"/> Franklin Focus	<input type="checkbox"/> The Greater Lisbon Ledger
<input type="checkbox"/> The Oxford Hills Observer	<input type="checkbox"/> The Country Connection
<input type="checkbox"/> The Country Courier	<input type="checkbox"/> Tri County Business Focus
<input type="checkbox"/> The Western Maine Foothills	

Months to run:

JAN

FEB

MAR

APR

MAY

JUN

JUL

AUG

SEP

OCT

☒ NOV

DEC

PROOF REQUESTED ☐

AD COPY

All agreements must list which months ad runs will occur and all accounts must be current to receive discount available.
We reserve the right to bill any account not current at the open rate.

IMPORTANT INFORMATION

UNDERSTANDING OUR 6 AND 12 MONTH AGREEMENTS: As our publications comes out monthly, it is imperative that advertisers who sign up to receive appropriate discounts understand and hold true to their end of the agreement. Our 25% discount for year-long advertisers commits you to 1 ad per month for 12 months. Failure to comply reverts advertisers back to the next lowest rate. (i.e. If your monthly discount is \$24 and you cancel your agreement after 4 months, you will be held responsible for the discount given; \$24 x 4 or \$96). We at Turner Publishing, Inc. must take this action to ensure fair billing practices for all advertisers. Signing below indicates that you understand the terms of this agreement.

BUSINESS PROFILES: Should a Business Profile be written as part of the contract, cancelling a contract will result in billing at the open rate PLUS billing for the Business Profile: Up to 1/2 page is \$750, more than 1/2 page to a full page is \$1500.

CREDIT: Credit will be extended only when a credit application has been completed and approved. All advertisers must pre-pay monthly until credit is approved by Turner Publishing, Inc. A finance charge of 1.5% will be added to all invoices not paid within 30 days of the payment due date.

Signature of applicant

Today's Date

Signature of TPC Representative

Today's Date

Price includes
4300 Direct
Mail pieces to
District List

Capsawn Designs Inc.

191 Turner Street
P.O. Box 18
Auburn, Maine 04210
Customer

Robert Parker jr.
Tel No. 207-782-5888
Fax No. 207-777-5825

Quote 11/1/05
Date
Design I-11-04-1

Chris McCarthy

Naor
Mowly

Day Phone 240-0911

Work Phone

Fax No.

Quantity	Style No.	Product	Color	SM	Med	Lg	Xlg	XX	XXX	Price	Amount
24		SS Tee	Dark		6	12	6			8.25	198.00
		Quantity	Unit Cost	Lettering Charges							
		Art Prep	2 x 10.00							20.00	
		Screen									
		Print Charge									
		Numbers									
		Color Change									
		Emb. Charge									
		Diso Charge									
		Emb Names									

Sub Total

258.00

5% Sales Tax

10.90

Shipping

TOTAL DUE

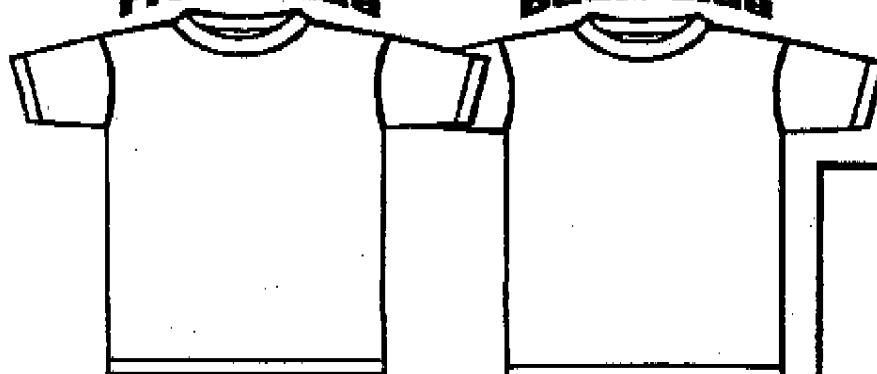
268.90

Deposit

Balance Due

Front Side

Back Side



Colors Used

207-782-5888 capsawn@megalink.net

Payment Receipt

SUN-JOURNAL SUNDAY
PO BOX 4400
LEWISTON ME 04243-4400
207-784-5411

Date: 11/01/04
Date Taken: 11/02/04

Acct: MCC00711

Phone: 207-240-0711

Name: MCCARTHY, CHRIS

Addr1: 10 FARILAWN AVE

Addr2: LEWISTON, ME

Addr3: 04240

Addr4:

Order Type: H

Order#: 897329

Graphics:
Inserts

MISC:

\$407.70

Prod/Edition:

Total: 0.00
Extras: 0.00
Discnts: 0.00
NetTot: 0.00
Amt Pd: 0.00

Current Balance Due

0.00

Balance: 0.00

Payment Type: Cash

Card:

Start Date: 11/02/04
Received By: MDG

ITEM #13

Ex. A.

Damein Roberts
10 Leeds Street
Lewiston, ME 04240

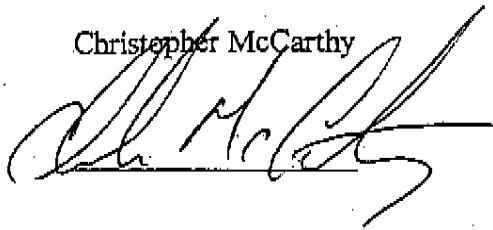
November 1, 2004

Contract for twelve signs for upcoming election year 2004. Materials and labor included for the total invoice cost of \$300. Materials include three sheets of plywood, 1 bundle of strapping, three cans of spay paint, and four poster boards.

Damein Roberts

A handwritten signature in dark ink, appearing to read "Damein Roberts", written over a horizontal line.

Christopher McCarthy

A handwritten signature in dark ink, appearing to read "Chris McCarthy", written over a horizontal line.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: May 5, 2005

Re: Recommendations Regarding Christopher M. McCarthy

Late Filing of Reports

Christopher M. McCarthy was an unenrolled candidate for the Maine House of Representatives in 2004. On June 7, 2004, he received \$4,031 in public funds under the Maine Clean Election Act (MCEA). He was required to file campaign finance reports on October 27, 2004 and December 14, 2004, which should have itemized his MCEA expenditures. He filed neither report. The Commission mailed him non-filer notices on November 1 and December 17 by regular mail, to which he didn't respond.

In December and January, the Commission staff mailed four more letters to Mr. McCarthy stating that at the January 12, 2005 Commission meeting the staff would recommend his referral to the Attorney General's Office for criminal prosecution for failure to file the campaign finance reports. On January 12 (the day of the meeting) he filed a single report covering both reporting periods for the October 27 and December 14 reports.

The Commission staff treated the January 12, 2005 report as a late filing for both the October 27 and December 14 reports. On March 29, 2005, the Commission staff sent him by certified mail two separate penalty notices in different envelopes. The late penalty for the October 27 report was \$3,104.64, and the late penalty for the December 14 report was \$863.21. The total civil penalty is \$3,967.85. These two certified envelopes were returned to the Commission office unclaimed after the post office attempted to deliver them and left him two notices that the post office could re-deliver the envelopes at his request or he could pick them up.

Repayment of Unspent MCEA Funds

On December 2, 2004, the Commission mailed Mr. McCarthy a reminder for the December 14 report that explained the requirement that he return all unspent Maine Clean Election Act funds with the December 14 report. To date, Mr. McCarthy has not returned any unspent Maine Clean Election Act funds. Of 308 MCEA participants in the 2004 elections, he is one of only two candidates who were required to return unspent funds and have not.

Based on the January 12 report, Mr. McCarthy had \$845.72 in unspent MCEA funds, which he was required to return to the Ethics Commission.

Most Recent Correspondence

On April 15, 2005, the Commission staff mailed Mr. McCarthy a letter by regular and certified mail requesting the return of \$845.72 in public funds and informing him that he was required to pay the late filing penalty or request a waiver. The letter informed him that the Commission would consider him for referral to the Attorney General's Office at the May 11 meeting if he did not respond. Mr. McCarthy received the April 15 letter, which is confirmed by his signature on the green return receipt card. To date, he has not responded. The Commission staff also sent the letter by e-mail as a Microsoft Word attachment.

Unfortunately, the April 15 letter only made reference to the December 14 late filing penalty of \$863.21, and omitted any reference to the October 27 penalty of \$3,104.64. Today, I sent him an updated letter informing him that at the May 11 meeting I would recommend referral to the Attorney General for collection of the entire \$3,967.85 in penalties.

Mr. McCarthy did not supply the Commission with a working telephone number. The number he provided on his registration form, (207) 783-2511, only functions as a fax machine/computer line. Since December 2004, I have left multiple messages for him with his employer, the Mickeriz Appraisal Company of Rumford, Maine. He has not responded to any of them.

Recommendation

In my April 15 letter, I recommended to Mr. McCarthy that he attend the May 11 meeting of the Commission. If he does not respond prior to May 11 or attend the meeting, my recommendation is that the Commission:

- authorize referring Christopher McCarthy to the Attorney General's Office for collection of \$3,967.85 in penalties if they are not paid within 30 days of the May 11 determination;
- refer Mr. McCarthy to the Attorney General's office for collection of the \$845.72 repayment;
- assess a civil penalty of \$1,000 for violating 21-A M.R.S.A. §1127(1) and Chapter 3, Section 7(2)(B)(3) of the Commission's Rules by failing to repay unspent MCEA funds; and
- authorize the staff to refer Mr. McCarthy to the Attorney General's Office for collection of the \$1,000 penalty if it remains unpaid within 30 days of the Commission determination.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

FINAL AGENCY DETERMINATION

May 17, 2005

BY REGULAR AND CERTIFIED MAIL

Christopher M. McCarthy
10 Fairlawn Avenue
Lewiston, ME 04240

Dear Mr. McCarthy:

At its meeting on Wednesday, May 11, which you attended, the Maine Commission on Governmental Ethics and Election Practices assessed the following civil penalties against you:

- (1) a penalty of \$3,104.64 under 21-A M.R.S.A. §1020-A(4) for violating 21-A M.R.S.A. §1017(3-A)(B) by filing the 6-day pre-election report due October 27, 2004 seventy-seven days late;
- (2) a penalty of \$863.21 under 21-A M.R.S.A. §1020-A(4) for violating 21-A M.R.S.A. §1017(3-A)(D) for filing the 42-day post-election report due December 14, 2004 twenty-nine days late; and
- (3) a penalty of \$5,000 under 21-A M.R.S.A. §1127(1) for violating 21-A M.R.S.A. §1125(12) and Chapter 3, Section 7(2)(B)(3) of the Commission Rules by failing to return unspent Maine Clean Election Act funds by December 14, 2004.

The total amount of the penalties is \$8,967.85. For your reference, I have attached the relevant legal provisions, a copy of your January 12, 2005 campaign finance report, and two charts showing the calculation of the late filing penalties. This constitutes a final agency action by the Commission, which you may appeal, pursuant to the Maine Administrative Procedure Act, 5 M.R.S.A. §§11001-11008, and Rule 80C of the Maine Rules of Civil Procedure.

Christopher M. McCarthy

- 2 -

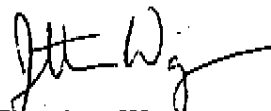
May 17, 2005

Please pay these penalties within 30 days of your receipt of this letter by submitting a check or money order in the amount of \$8,967.85 payable to "Treasurer, State of Maine".

In the alternative, the Commission would accept a plan to pay the total amount due within one year. I have attached a draft payment plan for your consideration. If you agree with the plan, please sign it and return it to me no later than June 15, 2005 with the first installment payment. If you would prefer a different plan that calls for a larger initial payment and smaller subsequent monthly payments, please telephone me. I would be pleased to draft a different plan that is mutually agreeable for your signature.

If you wish to discuss this matter, please telephone me at 287-6219. Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Wayne", with a long horizontal flourish extending to the right.

Jonathan Wayne
Executive Director



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

**Payment Agreement Between Christopher M. McCarthy
and the Maine Commission on
Governmental Ethics and Election Practices**

1. On May 11, 2005, the Maine Commission on Governmental Ethics and Election Practices ("the Commission") assessed civil penalties totaling \$8,967.85 against Christopher M. McCarthy. In order to facilitate satisfaction of this obligation, the Commission and Mr. McCarthy agree to the following.

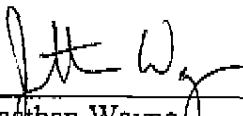
2. Mr. McCarthy will make the payments according to the following deadlines:

Amount	Payment Deadline
\$750	June 15, 2005
\$750	July 15, 2005
\$750	August 15, 2005
\$750	September 15, 2005
\$750	October 15, 2005
\$750	November 15, 2005
\$750	December 15, 2005
\$750	January 15, 2006
\$750	February 15, 2006
\$750	March 15, 2006
\$750	April 15, 2006
\$717.85	May 15, 2006

All payments must be received by 5:00 p.m. on the payment deadline. Mr. McCarthy may pay some amounts early, which would permit him to omit making scheduled payments which have been pre-paid.

3. As long as payments are made by the above deadlines, the Commission will not take action to collect the unpaid amount. If any payment is not received on time, the Commission will refer the unpaid amount to the Maine Attorney General's Office for collection without prior notice to Mr. McCarthy.

4. All payments should be made through check or money order payable to "Treasurer, State of Maine." Payments should be submitted to: Maine Ethics Commission, Attn: Jonathan Wayne, 135 State House Station, Augusta, Maine 04333. The Commission's street address (for delivery other than U.S. Mail) is 242 State Street, Augusta, Maine, 04330.



Jonathan Wayne
Executive Director
Maine Ethics Commission

Christopher M. McCarthy

5/17/05

Date

Date



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

May 5, 2005

BY REGULAR AND CERTIFIED MAIL

Christopher M. McCarthy
10 Fairlawn Avenue
Lewiston, ME 04240

Dear Mr. McCarthy:

This is to clarify the unresolved issues that will be considered by the Ethics Commission when it meets on May 11 at 9:00 a.m. at the Commission's office at 242 State Street in Augusta. This letter also corrects an omission in my letter of April 15, 2005.

Failure to Pay Late Filing Penalties

On March 29, the Maine Ethics Commission sent you two penalty letters by certified mail (attached). The first penalty letter notified you that the Commission staff had made a preliminary determination that your October 27, 2004 report was filed 77 days late, and that the amount of the statutory penalty under 21-A M.R.S.A. §1020-A(4) for the late filing of that report was \$3,104.64. The second penalty letter notified you that the December 14, 2004 report was filed 29 days late, and the amount of the statutory penalty was \$863.21. The total of the two penalties is \$3,967.85.

The March 29 letters notified you that you could request a waiver of the penalties by submitting a written request within 10 days. Our understanding is that the U.S. Post Office attempted to deliver the March 29 letters to you on March 31 and left you notices (pink slips) regarding the certified mail envelopes on March 31 and April 5. The letters were returned to the Ethics Commission unclaimed.

After receiving no response from you, on April 15 the Ethics Commission sent you a follow-up letter (attached) which you received and signed for. Unfortunately, that letter only referred to the \$863.21 penalty, not the additional \$3,104.64 penalty. We apologize for the omission.

This letter is to clarify that both penalties totaling \$3,967.85 are under consideration. If you do not request a waiver at or before the May 11, 2005 meeting, the penalties will be deemed final as of May 11 and due and payable within 30 days. At the meeting, the Commission staff will seek the authorization of the Commission

Christopher McCarthy

- 2 -

May 5, 2005

members to refer you to the Attorney General's Office for collection of the \$3,967.85 penalty on June 10 (30 days after May 11). I highly recommend that you attend the May 11 meeting of the Commission to request a waiver.

Return of Maine Clean Election Act Funds

Your final campaign finance report which the Commission received on January 12, 2005 indicated that you had a cash balance as of \$845.72. Pursuant to 21-A M.R.S.A. §1125(12) and Chapter 3, Section 7(2)(B)(3) of the Commission Rules, this amount was required to be returned to the Ethics Commission by December 14, 2004. If \$845.72 is not returned to the Ethics Commission by May 11, at the meeting on that date I will recommend to the members of the Ethics Commission that:

- the Commission assess a civil penalty against you of \$1,000.00 under 21-A M.R.S.A. §1127(1) for violating 21-A M.R.S.A. §1125(12) and Chapter 3, Section 7(2)(B)(3) of the Commission Rules by failing to return unspent Maine Clean Election Act funds; and
- the Commission authorize the Commission staff to refer you to the State Attorney General for collection of the \$845.72 repayment of public funds and the \$1,000 civil penalty if they remain unpaid for 30 days.

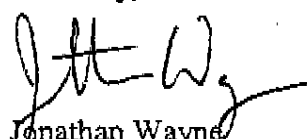
Please return the funds by submitting a check in the amount of \$845.72 payable to the "Maine Clean Election Fund." If you choose not to submit this amount, you may nevertheless respond to the proposed penalty in person at the May 11 meeting or by submitting a written response.

Insufficient Reporting of Expenditure

On page 1 of the expenditure schedule of your January report, you stated that you spent \$300 for signs. The Election Law (21-A M.R.S.A. §1017(5)) requires you to report the date and payee of every expenditure. Please state in writing the date and payee of this payment.

If you have any questions regarding this matter, please telephone me at 287-6219. Thank you.

Sincerely,


Jonathan Wayne
Executive Director



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

April 15, 2005

BY REGULAR AND CERTIFIED MAIL

Christopher McCarthy
10 Fairlawn Avenue
Lewiston, ME 04240

Dear Mr. McCarthy:

This letter is to follow up on the Ethics Commission's past letters, and telephone and e-mail messages to you regarding your obligation to return unspent Maine Clean Election Act funds and to pay a civil penalty for late filing or request a waiver of the penalty. ***Please be advised that if you do not respond to these issues, you likely will be referred to the Maine State Attorney General's Office at the next meeting of the Ethics Commission on May 11 at 9:00 a.m. I highly recommend that you attend the Commission meeting, which will take place at the Commission's office at 242 State Street in Augusta.***

Return of Maine Clean Election Act Funds

Your final campaign finance report which the Commission received on January 12, 2005 indicated that you had a cash balance as of \$845.72. Pursuant to Chapter 3, Section 7(2)(B)(3) of the Commission Rules, this amount was required to be returned to the Ethics Commission by December 14, 2004. If \$845.72 is not returned to the Ethics Commission by May 11, at the meeting on that date I will recommend to the members of the Ethics Commission that:

- the Commission assess a civil penalty against you of \$1,000.00 under 21-A M.R.S.A. §1127(1) for violating Chapter 3, Section 7(2)(B)(3) of the Commission Rules by failing to return unspent Maine Clean Election Act funds; and
- the Commission refer you to the State Attorney General for collection of the \$845.72 repayment of public funds and the \$1,000 civil penalty.

Please return the funds by submitting a check in the amount of \$845.72 payable to the "Maine Clean Election Fund." If you choose not to submit this amount, you may respond to the proposed penalty in person at the May 11 meeting or by submitting a written response no later than May 2.

Christopher McCarthy

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April 15, 2005

Late Filing Penalty

On March 29, 2005, the Commission mailed you a notice of a preliminary finding by the Commission staff that you owe a civil penalty of \$863.21 for filing the post-election campaign finance report 29 days late on January 12, 2005. That letter requested that you pay the penalty within 30 days or submit a written request for a waiver of the penalty within 10 days of your receipt of the March 29 letter. To date, you have done neither.

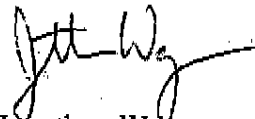
If you have not paid the \$863.21 penalty or submitted a written request for a waiver by May 11, at the meeting I will recommend that the Commission refer you to the State Attorney General for collection of the \$863.21 penalty, in addition to the matters mentioned above. The Commission will consider any request for a waiver of the penalty at the May 11 meeting, and I highly recommend that you attend the meeting if you wish to seek a waiver.

Insufficient Reporting of Expenditure

On page 1 of the expenditure schedule of your January report, you stated that you spent \$300 for signs. The Election Law (21-A M.R.S.A. §1017(5)) requires you to report the date and payee of every expenditure. Please state in writing the date and payee of this payment.

If you have any questions regarding this matter, please telephone me at 287-6219. Thank you.

Sincerely,



Jonathan Wayne
Executive Director



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

March 29, 2005

Mr. Christopher McCarthy
10 Fairlawn Ave
Lewiston, ME 04240

BY CERTIFIED MAIL

Dear Mr. McCarthy:

RE: Late 42-Day Post-General Campaign Finance Report Due 12/7/2004.

You filed a 42-Day Post-General campaign finance report on 1/12/2005. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the candidate's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report would be \$863.21. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign its receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

NOTE: The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) a valid emergency determined by the Commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or (4) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

The Maine Clean Election Act requires all revenues distributed to certified candidates from the fund to be used for campaign-related purposes. Commission guidelines regarding permissible campaign-related expenditures do not include the payment of a penalty as a permissible expenditure.

Sincerely,

Nathaniel Brown



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135
March 29, 2005

Mr. Christopher McCarthy
10 Fairlawn Ave.
Lewiston, ME 04240

The Commission staff has made a preliminary determination, based upon application of the statutory formula, that a penalty of \$863.21 applies for the late filing of your 42-Day Post-General Report campaign finance report. If you agree with this determination, please make your check or money order in that amount payable to "Treasurer, State of Maine," and send it, along with the bottom half of this letter, to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333, within 30 days of the date noted above. Please see the instructions included in the attached letter if you would like the Commission to make a formal determination of any penalty to be assessed in this case.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay the full amount of any penalty. Please direct any questions you may have about this matter to Nathaniel Brown at 287-4179.

Cut Along Dotted Line

For Office Use Only:
Account: CGEEP
Fund: 014 Approp: 02

To Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

From: Mr. Christopher McCarthy

RE: Penalty for late filing of 42-Day Post-General Campaign Finance Report

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

Please Make Check or Money Order Payable to Treasurer, State of Maine

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

BASIS FOR PENALTIES
21-A M.R.S.A. Section 1020-A(4)

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%

For the second violation, 3%

For the third and each subsequent violation, 5%

A penalty begins to accrue at 5:00 p.m. on the day the report is due.

Example: The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500 Greater amount of the total contributions received or expenditures made during the filing period

X .01 Percent prescribed for first violation

\$25.00 One percent of total contributions

X 2 Number of calendar days late

\$50.00 Total penalty

Your penalty is calculated as follows:

Contributions/Expenditures: \$ 2,976.60

Percent prescribed: x .01
\$ 29.77

Number of days late: x 29

Total penalty accrued: \$ 863.21

42-Day Post-General

Any penalty of less than \$5 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

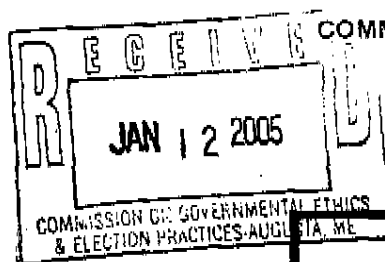
A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

MAXIMUM PENALTIES
21-A M.R.S.A. Section 1020-A(5)

\$5,000 for reports required to be filed 42 days before an election (gubernatorial candidate only),
6 days before an election, 42 days after an election, and for 48-hour reports;
\$1,000 for semiannual reports.

Jan 12 05 03:00a

p. 1



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Mail: 135 State House Station, Augusta, Maine 04333-0135

Office: 242 State Street, Augusta, Maine

Tel: (207) 287-4179 Fax: (207) 287-6775

Web site: www.maine.gov/ethics

Electronic Filing: www.maine.campaignfinance.com

2004 CAMPAIGN FINANCE REPORT -
MAINE CLEAN ELECTION ACT CANDIDATES

(Please Complete ALL Entries)

Name of CANDIDATE CHRISTOPHER M. MCCARTHY
 Mailing address 10 FAIRLAWN AVE.
 City, zip code LEWISTON ME 04240
 Telephone number 783-2511 Fax 783-2511 E-mail CMCCARTHY1@ADELPHIA.NET
 Name of Candidate's Committee, if any _____
 Election Year 2004 Office Sought HOUSE REPRESENTATIVE District Number 73

CHECK IF CHANGED
SINCE PREVIOUS
REPORT ☐

Name of TREASURER SAME AS ABOVE
 Mailing address _____
 City, zip code _____
 Telephone number _____ Fax _____ E-mail _____

CHECK IF CHANGED
SINCE PREVIOUS
REPORT ☐

Type of Report (check applicable):	Due date:	Period included:
() 6-Day Pre-Primary	June 2, 2004	Last Report - May 27, 2004
() 42-Day Post-Primary	July 20, 2004	May 28, 2004 - July 13, 2004
() 6-Day Pre-General	October 27, 2004	July 14, 2004 - October 21, 2004
() 42-Day Post-General	December 14, 2004	October 22, 2004 - December 7, 2004
() Amendment to: _____		
() Other (specify): _____		

I CERTIFY THAT I HAVE EXAMINED THIS REPORT AND TO THE BEST OF MY KNOWLEDGE IT IS TRUE, CORRECT AND COMPLETE.

Treasurer's Signature

Date

Candidate's Signature

Date

Jan 12 05 03:00a

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CHRIS MCCARTHY
MCEA Candidate Name

Schedule A
Cash Receipts

Itemize each cash receipt during this reporting period, including initial distributions and matching funds payments received under the Maine Clean Election Act. For matching fund payments, indicate the amount the Commission has authorized you to spend.

Date	Source (MCEA initial distribution, payment of matching funds)	Amount Received	Amount Authorized to be Spent
6/7/04	MCEA Initial Distribution	4,032.	4,032.
	Matching Funds Payment		
	Additional Authorization to Spend Matching Funds		
	Additional Authorization to Spend Matching Funds		
	Additional Authorization to Spend Matching Funds		
	Additional Authorization to Spend Matching Funds		
	Additional Authorization to Spend Matching Funds		
	Additional Authorization to Spend Matching Funds		
Total cash receipts authorized to be spent in this reporting period (Enter on Schedule G, Line 2)			4,032

Jan 12 05 03:00a

p.3

Page 1 of 2
(Schedule B only)SCHEDULE B
EXPENDITURESCHRISTOPHER MARK MCCARTHY
CANDIDATE'S FULL NAME

Itemize each expenditure made or authorized during the report filing period by category of the purpose for that expenditure. Use "Other" and "Remarks" to include and explain any expenditure that may not be clearly itemized under one of the other categories.

DATE EXPENDITURE MADE OR AUTHORIZED	NAME OF EACH PAYEE	GENERAL OPERATIONS (Fundraising, travel, equipment, etc.)	ADVERTISING (Radio, TV, newspaper, etc.)	PRINTING / POSTAGE, etc. (Direct mail, campaign lit., signs, etc.)	SALARIES & COMPENSATION	OTHER (Describe purpose in remarks)	REMARKS
5/26	WALMART	109.20					MONEY ORDERS FOR FUNDRAISING
5/31	WALMART	54.60					MONEY ORDERS
10/19	CITY OF LEWISTON	20.00					FILING
10/6	LEWISTON MANDARIN				25.88		LUNCH w/ PRINTER & CAMPAIGN COORDINATOR
11/2	LEWISTON SUN JOURNAL		407.70				
10/23	TURNER PUBLISHING			2040			DIRECT MAIL
				300			SIGNS
1. Total expenditures this page only [Total each column]							
(Complete lines 2 and 3 on last page of Schedule B only)							
2. Total from attached Schedule B pages							
3. TOTAL EXPENDITURES BY CATEGORY (add lines 1 and 2)							
a.	b.	c.	d.	e.	Total 3a - 3e. Enter on Schedule B, Line 8. \$2957.38		

Jan 12 05 03:00a

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Page 2 of 2
(Schedule B only)SCHEDULE B
EXPENDITURES

Itemize each expenditure made or authorized during the report filing period by category of the purpose for that expenditure. Use "Other" and "Remarks" to include and explain any expenditure that may not be clearly itemized under one of the other categories.

Charles Stephen Mark McCarty
CANDIDATE'S FULL NAME

DATE EXPENDITURE MADE OR AUTHORIZED	NAME OF EACH PAYEE	GENERAL OPERATIONS (Fundraising, travel, equipment, etc.)	ADVERTISING (Radio, TV, news paper, etc.)	PRINTING / POSTAGE, etc. (Direct mail, campaign lit., signs, etc.)	SALARIES & COMPENSATION	OTHER (Describe purpose in remarks)	REMARKS
11/1	Capsaw Design		228.90				T-SHIRTS
1. Total expenditures this page only (Total each column)							
(Complete lines 2 and 3 on last page of Schedule B only)							
2. Total from attached Schedule B pages							
3. TOTAL EXPENDITURES BY CATEGORY (add lines 1 and 2)			228.90				
		a.	b.	c.	d.	e.	Total 3a - 3e. Enter on Schedule G, Line 8. 3186.28

Jan 12 05 03:01a


p. 5

CHRISTOPHER MARK MCCARTHY
CANDIDATE'S FULL NAME

Page 1 of 1
(Schedule E only)

SCHEDULE E
TOTAL OUTSTANDING BILLS (OTHER THAN LOANS)

List unpaid bills at close of this period. List bills previously reported if still unpaid.
Do not include actual expenditures on this schedule.

DATE OBLIGATION INCURRED	CREDITOR'S NAME AND ADDRESS	PURPOSE	AMOUNT
1. Total outstanding bills this page only			
(Complete lines 2 and 3 on last page of Schedule E only)			
2. Total from attached Schedule E pages (____ to ____)			
3. TOTAL OUTSTANDING BILLS (add lines 1 and 2)			Enter on Sch. G, Line 11 

Jan 12 05 03:01a

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
CHRISTOPHER MARK MCCANNY
CANDIDATE'S FULL NAME

Page 1 of 1
(Schedule F only)


**SCHEDULE F
CAMPAIGN EQUIPMENT/PROPERTY INVENTORY**

List items with an aggregate value in excess of \$50 at close of this period. Items must be listed until aggregate fair market value is \$50 or less, or until item is reported in Part II. Include only equipment or property that may be converted to personal use and is not exclusive to the campaign such as a computer, telephone/fax, photocopier, automobile, etc. Exclude signs, stationery, campaign literature, etc.

PART I - ONGOING INVENTORY OF CAMPAIGN PROPERTY

DATE RECEIVED (from Schedule A) or DATE PURCHASED (from Schedule B)	DESCRIPTION OF EQUIPMENT OR PROPERTY	PURCHASE PRICE OR ESTIMATED VALUE WHEN ACQUIRED	FAIR MARKET VALUE (at close of this reporting period)
1. TOTAL ESTIMATED VALUE OF CAMPAIGN PROPERTY AT CLOSE OF THIS PERIOD			

PART II - SALES OR TRANSFERS OF CAMPAIGN PROPERTY THIS PERIOD

			Column 1	Column 2
DATE SOLD, DONATED OR TRANSFERRED	NAME AND ADDRESS OF PURCHASER, DONEE, OR TRANSFeree	DESCRIPTION OF PROPERTY	SALE PRICE OR FAIR MARKET VALUE	VALUE OF DONATION TO CHARITABLE OR EDUCATIONAL ORGANIZATION
2. TOTAL ACTIVITY FROM EQUIPMENT/PROPERTY DISPOSALS THIS PERIOD			Enter on Schedule G, line 4	

Jan 12 05 03:01a

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CHRIS MCCARTHY
MCEA Candidate Name

SCHEDULE G
DETAILED SUMMARY PAGE OF RECEIPTS AND EXPENDITURES

RECEIPTS	This Reporting Period	Total This Campaign
1. Previous total receipts (from last report)	Ø	
2. Cash receipts this period (from Schedule A)	3186.28	3186.28
3. Unitemized receipts this period (interest income, etc.)		Ø
4. Sale of campaign property this period (from Schedule F)		Ø
5. Total receipts this period (add lines 2, 3 and 4)		3186.28
6. TOTAL RECEIPTS DURING THIS CAMPAIGN (add lines 1 and 5)		3186.28

EXPENDITURES

7. Previous total expenditures (from last report)		Ø
8. Expenditures this period (from Schedule B)		3186.28
9. TOTAL EXPENDITURES DURING THIS CAMPAIGN (add lines 7 and 8)		3186.28

CASH BALANCE

10. CASH BALANCE END OF REPORTING PERIOD (subtract line 9 from line 6)		845.72
--	--	--------

DEBTS AND LIABILITIES

11. Total outstanding bills (from Schedule E)		Ø
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21-A MRSA §1017

The reports may either be filed in person with the commission on that date or postmarked on that date. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section.

G. Unless otherwise specified in this subsection, reports must be complete back to the completion date of the previous report. The reports described in paragraph E, if filed with respect to a primary election, are considered previous reports in relation to reports concerning a general election.

H. Reports with respect to a candidate who seeks nomination by petition for the office of Governor must be filed on the same dates that reports must be filed with respect to a candidate who seeks that nomination by primary election.

3. Other candidates. (REPEALED)

3-A. Other candidates. A treasurer of a candidate for state or county office other than the office of Governor shall file reports with the commission and municipal candidates shall file reports with the municipal clerk as follows. Once the first required report has been filed, each subsequent report must cover the period from the completion date of the prior report filed.

A. In any calendar year in which an election for the candidate's particular office is not scheduled, when any candidate or candidate's political committee has received contributions in excess of \$500 or made or authorized expenditures in excess of \$500, reports must be filed no later than 5 p.m. on July 15th of that year and January 15th of the following calendar year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the treasurer of the candidate as of the end of the preceding month, except those covered by a previous report.

* B. Reports must be filed no later than 5 p.m. on the 6th day before the date on which an election is held and must be complete as of the 12th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the completion date.

C. Contributions aggregating \$1,000 or more from any one contributor or single expenditures of \$1,000 or more, made after the 12th day before any election and more than 24 hours before 5 p.m. on the day of any election must be reported within 24 hours of those contributions or expenditures, or by noon of the first business day after the contributions or expenditures, whichever is later.

* D. Reports must be filed no later than 5 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date.

E. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$50 shown in the reports described in paragraph D must be reported as provided by this paragraph. The treasurer of a candidate with a surplus or deficit in excess of \$50

21A § 1020-A. Failure to file on time

1. **Registration.** A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

2. **Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission before 5 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part;
- B. An error by the commission staff;
- C. Failure to receive notice of the filing deadline; or
- D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

3. **Municipal campaign finance reports.** Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

4. **Basis for penalties. (REPEALED)**

* 4-A. **Basis for penalties.** The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

- A. For the first violation, 1%;
- B. For the 2nd violation, 3%; and
- C. For the 3rd and subsequent violations, 5%.

Any penalty of less than \$5 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as an original of the same report is received by the commission within 5 calendar days thereafter.

The penalty for late filing of an accelerated campaign finance report as required in section 1017, subsection 3-B is equivalent to but no more than 3 times the amount by which the contributions received or expenditures obligated or made by the candidate, whichever is greater, exceed the applicable Maine Clean Election Fund disbursement amount, per day of violation. The commission shall make a finding of fact establishing when the report was due prior to imposing a penalty under this subsection. A penalty for failure to file an accelerated campaign finance report must be made payable to the Maine Clean Election Fund. In assessing a penalty for failure to file an accelerated campaign finance report, the commission shall consider the existence of mitigating circumstances. For the purposes of this subsection, "mitigating circumstances" has the same meaning as in subsection 2.

5. Maximum penalties. (REPEALED)

5-A. Maximum penalties. Penalties assessed under this subchapter may not exceed:

- A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D or F; section 1017, subsection 4; and section 1019-B, subsection 3;
- B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E;
- C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E;
- D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B; or
- E. Three times the unreported amount for reports required under section 1017, subsection 3-B, if the unreported amount is less than \$5,000 and the commission finds that the candidate in violation has established, by a preponderance of the evidence, that a bona fide effort was made to file an accurate and timely report.

6. Request for a commission determination. Within 3 days following the filing deadline, a notice must be forwarded to a candidate and treasurer whose registration or campaign finance report is not received by 5 p.m. on the deadline date, informing them of the basis for calculating penalties under subsection 4 and providing them with an opportunity to request a commission determination. The notice must be sent by certified

United States mail. Any request for a determination must be made within 10 calendar days of receipt of the commission's notice. The 10-day period during which a determination may be requested begins on the day a recipient signs for the certified mail notice of the proposed penalty. If the certified letter is refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. A candidate or treasurer requesting a determination may either appear in person or designate a representative to appear on the candidate's or treasurer's behalf or submit a notarized written explanation of the mitigating circumstances for consideration by the commission.

7. Final notice of penalty. After a commission meeting, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the treasurer.

If no determination is requested, the commission staff shall calculate the penalty as prescribed in subsection 4 and shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

8. Failure to file report. The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. If a candidate fails to file a report after 3 written communications from the commission, the commission shall send up to 2 more written communications by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the communications required by this subsection is guilty of a Class E crime.

8-A. Penalties for failure to file report. The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.

9. List of late-filing candidates. The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

10. Enforcement. The commission staff has the responsibility for collecting the full amount of any penalty and has all necessary powers to carry out this responsibility. Failure to pay the full amount of any penalty levied under this subchapter is a civil violation by the candidate, treasurer, political party or other person whose campaign finance activities are required by this subchapter to be reported. Thirty days after issuing the notice of penalty, the commission shall report to the Attorney General the name of any person who has failed to pay the full amount of any penalty. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the penalty. This action must be brought in the Superior Court for Kennebec County or the District Court, 7th District, Division of Southern Kennebec.

*

was improper. The commission must rule on the appeal within 3 days after the completion of the hearing.

C. A challenger may appeal the decision of the commission in paragraph B by commencing an action in Superior Court according to the procedure set forth in section 356, subsection 2, paragraphs D and E.

D. A candidate whose certification by the commission as a Maine Clean Election Act candidate is revoked on appeal must return to the commission any unspent revenues distributed from the fund. If the commission or court find that an appeal was made frivolously or to cause delay or hardship, the commission or court may require the moving party to pay costs of the commission, court and opposing parties, if any.

21A § 1126. Commission to adopt rules

The commission shall adopt rules to ensure effective administration of this chapter. These rules must include but must not be limited to procedures for obtaining qualifying contributions, certification as a Maine Clean Election Act candidate, circumstances involving special elections, vacancies, recounts, withdrawals or replacements, collection of revenues for the fund, distribution of fund revenue to certified candidates, return of unspent fund disbursements, disposition of equipment purchased with clean election funds and compliance with the Maine Clean Election Act. Rules of the commission required by this section are major, substantive rules as defined in Title 5, chapter 375, subchapter II-A.

21A § 1127. Violations

* 1. **Civil penalty.** In addition to any other penalties that may be applicable, a person who violates any provision of this chapter or rules of the commission adopted pursuant to section 1126 is subject to a civil penalty not to exceed \$10,000 per violation payable to the fund. This penalty is recoverable in a civil action. In addition to any fine, for good cause shown, a candidate found in violation of this chapter or rules of the commission may be required to return to the fund all amounts distributed to the candidate from the fund. If the commission makes a determination that a violation of this chapter or rules of the commission has occurred, the commission shall assess a fine or transmit the finding to the Attorney General for prosecution. Fines paid under this section must be deposited in the fund. In determining whether or not a candidate is in violation of the expenditure limits of this chapter, the commission may consider as a mitigating factor any circumstances out of the candidate's control.

2. **Class E crime.** A person who willfully or knowingly violates this chapter or rules of the commission or who willfully or knowingly makes a false statement in any report required by this chapter commits a Class E crime and, if certified as a Maine Clean Election Act candidate, must return to the fund all amounts distributed to the candidate.

21-A MRSA §1127

originally distributed under subsection 8, paragraph A, C, E or F, whichever is applicable.

10. Candidate not enrolled in a party. An unenrolled candidate certified by April 15th preceding the primary election is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election candidate and a general election candidate as specified in subsections 7 and 8. For an unenrolled candidate not certified by April 15th at 5:00 p.m. the deadline for filing qualifying contributions is 5:00 p.m. on June 2nd preceding the general election. An unenrolled candidate certified after April 15th at 5:00 p.m. is eligible for revenues from the fund in the same amounts as a general election candidate, as specified in subsections 7 and 8.

11. Other procedures. The commission shall establish by rule procedures for qualification, certification, disbursement of fund revenues and return of unspent fund revenues for races involving special elections, recounts, vacancies, withdrawals or replacement candidates.

12. Reporting; unspent revenue. Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.] *

13. Distributions not to exceed amount in fund. The commission may not distribute revenues to certified candidates in excess of the total amount of money deposited in the fund as set forth in section 1124. Notwithstanding any other provisions of this chapter, if the commission determines that the revenues in the fund are insufficient to meet distributions under subsections 8 or 9, the commission may permit certified candidates to accept and spend contributions, reduced by any seed money contributions, aggregating no more than \$500 per donor per election for gubernatorial candidates and \$250 per donor per election for State Senate and State House candidates, up to the applicable amounts set forth in subsections 8 and 9 according to rules adopted by the commission.

14. Appeals. A candidate who has been denied certification as a Maine Clean Election Act candidate or the opponent of a candidate who has been granted certification as a Maine Clean Election Act candidate may challenge a certification decision by the commission as follows.

A. A challenger may appeal to the full commission within 3 days of the certification decision. The appeal must be in writing and must set forth the reasons for the appeal.

B. Within 5 days after an appeal is properly made and after notice is given to the challenger and any opponent, the commission shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the commission decision

Commission Rules
chapter 3, section 7

94-270 Chapter 3 page 14

2. Reporting by Participating and Certified Candidates.

A. General. Participating and certified candidates must comply with applicable reporting requirements set forth in Title 21-A, chapter 13, subchapter II [§ 1017].

B. Return of Matching Fund Advances and Unspent Fund Revenues. Matching Fund advance revenues that have not been authorized for spending and unspent Fund revenues shall be returned to the Fund as follows:

- (1) Unauthorized Matching Funds. Candidates must return all Matching Fund advance revenues for which no spending authorization was issued prior to an election to the Commission by check or money order payable to the Fund within 2 weeks following the date of the election.
- (2) Unspent Fund Revenues for Unsuccessful Primary Election Candidates. Upon the filing of the 42-day post-primary election report for a primary election in which a certified candidate was defeated, that candidate must return all unspent Fund revenues to the Commission by check or money order payable to the Fund.
- (3) Unspent Fund Revenues for All General and Special Election Candidates. Upon the filing of the 42-day post-election report for a general or special election, all candidates must return all unspent Fund revenues to the Commission by check or money order payable to the Fund.

*

C. Liquidation of Property and Equipment. Property and equipment that is not exclusive to use in a campaign (e.g., computers and associated equipment, etc.) that has been purchased with Maine Clean Election Act funds loses its campaign-related purpose following the election. Such property and equipment must be liquidated at its fair market value and the proceeds thereof reimbursed to the Maine Clean Election Fund as unspent fund revenues in accordance with the schedule in paragraph B above.

- (1) The liquidation of campaign property and equipment may be done by sale to another person or purchase by the candidate.
- (2) Liquidation must be at the fair market value of the property or equipment at the time of disposition. Fair market value is determined by what is fair, economic, just, equitable, and

April 15, 2005
letter

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece. 		A. Signature <i>Chris McCarthy</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee	
Christopher McCarthy 10 Fairlawn Ave. Lewiston, ME 04240		B. Received by (Printed Name) <i>CHRIS MCCARTHY</i> C. Date of Delivery	
		address different from item 1? <input type="checkbox"/> Yes or delivery address below: <input type="checkbox"/> No	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)		7003 1680 0004 7472 8021	
PS Form 3811, February 2004		Domestic Return Receipt 102595-02-M-1540	



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

*Fax #152
to
home*

Fax Cover Sheet

To: Chris McCarthy, 783-2511

From: Jonathan Wayne

Date: April 15, 2005

Subject: Referral to State Attorney General for Civil Collection

(15 pages total)

TRANSMISSION VERIFICATION REPORT

TIME : 04/15/2005 11:05
NAME : ETHICS COMMISSION
FAX : 2072876775
TEL : 2072874179
SER.# : BROK3J751924

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
RESULT
MODE

04/15 10:59
97832511
00:02:57
15
OK
STANDARD
ECM



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Fax #151
to
employer

Fax Cover Sheet

To: Chris McCarthy, 364-9913

From: Jonathan Wayne

Date: April 15, 2005

Subject: Referral to State Attorney General for Civil Collection

(15 pages total)

TRANSMISSION VERIFICATION REPORT

TIME : 04/15/2005 10:56
NAME : ETHICS COMMISSION
FAX : 2072876775
TEL : 2072874179
SER.# : BROK3J751924

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
RESULT
MODE

04/15 10:51
93649913
00:04:57
15
OK
STANDARD
ECM

Wayne, Jonathan

From: Wayne, Jonathan
Sent: Friday, April 15, 2005 11:05 AM
To: 'cmccarthy1@adelphia.net'
Subject: URGENT - Please Respond

Please read the attached letter requesting that you return \$845.72 in public funds, and pay a \$863.21 civil penalty or request a waiver of the penalty.

If you do not respond by May 11, on that date I will recommend to the members of the Ethics Commission that it refer you



Chris.McCarthy.Re
payment.Penal...

to the State Attorney General to collect the owed amounts.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

March 29, 2005

Mr. Christopher McCarthy
10 Fairlawn Ave
Lewiston, ME 04240

BY CERTIFIED MAIL

Dear Mr. McCarthy:

RE: Late 6-Day Pre-General Campaign Finance Report Due 10/27/2004.

You filed a 6-Day Pre-General campaign finance report on 1/12/2005. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the candidate's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report would be \$3,104.64. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign its receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

NOTE: The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) a valid emergency determined by the Commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or (4) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

The Maine Clean Election Act requires all revenues distributed to certified candidates from the fund to be used for campaign-related purposes. Commission guidelines regarding permissible campaign-related expenditures do not include the payment of a penalty as a permissible expenditure.

Sincerely,

Nathaniel Brown



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135
March 29, 2005

Mr. Christopher McCarthy
10 Fairlawn Ave.
Lewiston, ME 04240

The Commission staff has made a preliminary determination, based upon application of the statutory formula, that a penalty of \$3,104.64 applies for the late filing of your 6-Day Pre-General Report campaign finance report. If you agree with this determination, please make your check or money order in that amount payable to "Treasurer, State of Maine," and send it, along with the bottom half of this letter, to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333, within 30 days of the date noted above. Please see the instructions included in the attached letter if you would like the Commission to make a formal determination of any penalty to be assessed in this case.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay the full amount of any penalty. Please direct any questions you may have about this matter to Nathaniel Brown at 287-4179.

Cut Along Dotted Line

For Office Use Only:
Account: CGEEP
Fund: 014 Approp: 02

To Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

From: Mr. Christopher McCarthy

RE: Penalty for late filing of 6-Day Pre-General Campaign Finance Report

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

Please Make Check or Money Order Payable to Treasurer, State of Maine

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

BASIS FOR PENALTIES 21-A M.R.S.A. Section 1020-A(4)

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%

For the second violation, 3%

For the third and each subsequent violation, 5%

A penalty begins to accrue at 5:00 p.m. on the day the report is due.

Example: The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500	Greater amount of the total contributions received or expenditures made during the filing period
<u>X .01</u>	Percent prescribed for first violation
\$25.00	One percent of total contributions
<u>X 2</u>	Number of calendar days late
\$50.00	Total penalty

Your penalty is calculated as follows:

Contributions/Expenditures: \$	<u>4,032</u>
Percent prescribed:	<u>x .01</u>
	\$ <u>40.32</u>
Number of days late:	<u>x 77</u>
Total penalty accrued:	\$ <u>3,104.64</u>

6-Day Pre-General

Any penalty of less than \$5 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

MAXIMUM PENALTIES 21-A M.R.S.A. Section 1020-A(5)

\$5,000 for reports required to be filed 42 days before an election (gubernatorial candidate only),
6 days before an election, 42 days after an election, and for 48-hour reports;
\$1,000 for semiannual reports.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

March 29, 2005

Mr. Christopher McCarthy
10 Fairlawn Ave
Lewiston, ME 04240

BY CERTIFIED MAIL

Dear Mr. McCarthy:

RE: Late 42-Day Post-General Campaign Finance Report Due 12/7/2004.

You filed a 42-Day Post-General campaign finance report on 1/12/2005. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the candidate's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report would be \$863.21. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign its receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

NOTE: The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) a valid emergency determined by the Commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or (4) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

The Maine Clean Election Act requires all revenues distributed to certified candidates from the fund to be used for campaign-related purposes. Commission guidelines regarding permissible campaign-related expenditures do not include the payment of a penalty as a permissible expenditure.

Sincerely,

A handwritten signature in dark ink, appearing to read "Nathaniel Brown", with a stylized flourish at the end.

Nathaniel Brown



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135
March 29, 2005

Mr. Christopher McCarthy
10 Fairlawn Ave.
Lewiston, ME 04240

The Commission staff has made a preliminary determination, based upon application of the statutory formula, that a penalty of \$863.21 applies for the late filing of your 42-Day Post-General Report campaign finance report. If you agree with this determination, please make your check or money order in that amount payable to "Treasurer, State of Maine," and send it, along with the bottom half of this letter, to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333, within 30 days of the date noted above. Please see the instructions included in the attached letter if you would like the Commission to make a formal determination of any penalty to be assessed in this case.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay the full amount of any penalty. Please direct any questions you may have about this matter to Nathaniel Brown at 287-4179.

Cut Along Dotted Line

For Office Use Only:
Account: CGEEP
Fund: 014 Approp: 02

To Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

From: Mr. Christopher McCarthy

RE: Penalty for late filing of 42-Day Post-General Campaign Finance Report

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

Please Make Check or Money Order Payable to Treasurer, State of Maine

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

BASIS FOR PENALTIES

21-A M.R.S.A. Section 102D-A(4)

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%

For the second violation, 3%

For the third and each subsequent violation, 5%

A penalty begins to accrue at 5:00 p.m. on the day the report is due.

Example: The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500 Greater amount of the total contributions received or expenditures made during the filing period

X .01 Percent prescribed for first violation

\$25.00 One percent of total contributions

X 2 Number of calendar days late

\$50.00 Total penalty

Your penalty is calculated as follows:

Contributions/Expenditures: \$ 2,976.60

Percent prescribed: x .01

\$ 29.77

Number of days late: x 29

Total penalty accrued: \$ 863.21

42-Day Post-General

Any penalty of less than \$5 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

MAXIMUM PENALTIES

21-A M.R.S.A. Section 102D-A(5)

\$5,000 for reports required to be filed 42 days before an election (gubernatorial candidate only),

6 days before an election, 42 days after an election, and for 48-hour reports;

\$1,000 for semiannual reports.

Wayne, Jonathan

From: Wayne, Jonathan
Sent: Tuesday, March 29, 2005 5:03 PM
To: 'cmccarthy1@adelphia.net'
Cc: Brown, Nathaniel T; Seaman Jr, Andrew
Subject: Please Telephone Ethics Commission

This is to request that you telephone the Ethics Commission staff at 287-4179 regarding three outstanding issues. In light of your lack of timely response to past communications, please be aware that failure to respond to the Commission's requests will likely result in collection matters being referred to the State Attorney General.

1. Your January 12, 2005 campaign finance report indicated that you have unspent Maine Clean Election Act funds of \$845.72. That amount must be returned to the Commission. We request your cooperation in returning this amount within two weeks.
2. Tomorrow, the Ethics Commission will be sending you two late filing penalty notices regarding the reports due October 27 and December 14, 2004, that were not filed until January 12, 2005. The notices inform you of the PRELIMINARY penalty amounts, which total \$3,967.85. If you submit a written request for a waiver of the penalty, the Commission will consider reducing the penalties at its monthly meeting in May.
3. The Commission's auditor, Andrew Seaman, has some questions for you regarding expenditures on your January 12, 2005 report.

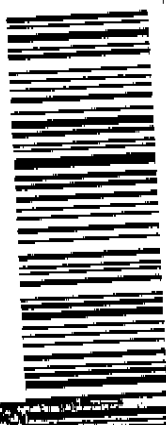
Thank you for your cooperation in responding to these issues.

March 29
envelopes
returned
unclaimed

COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0135

Christopher McCarthy
10 Fairlawn Ave.
Lewiston, ME

7003 1680 0004 7472 21



02 1A
0004366335
MAILED FROM ZIP CODE 04330

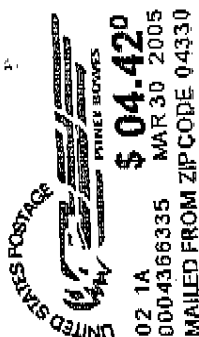


\$04.42

MAR 30 2005

CERTIFIED MAIL

COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0135



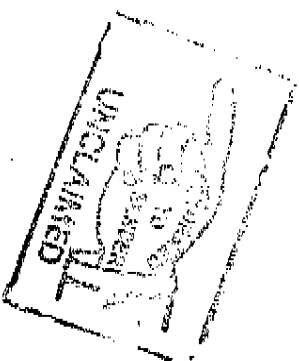
\$04.42
02 1A
0004366335
MAR 30 2005
MAILED FROM ZIP CODE 04330



PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

Christopher McCarthy
10 Fairlawn Ave.
Lewiston, ME

3/29/05
3/29/05





STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

January 3, 2005

Mr. Christopher McCarthy
10 Fairlawn Avenue
Lewiston, ME 04240

Re: Delinquent Campaign Finance Reports

Dear Mr. McCarthy:

The Ethics Commission has previously written you regarding your delinquent campaign finance reports, required under the Election Law and not filed. Failure to file a campaign finance report within 30 days of a filing deadline is a Class E Crime under 21-A M.R.S.A. §1020-A(8-A).

This is to inform you that the members of the Ethics Commission will be meeting at 9:00 a.m. on Wednesday, January 12, 2005. If the Commission staff does not receive your reports prior to January 12, it will recommend to the Commission members that you be referred to the Maine State Attorney General's Office for possible criminal prosecution under 21-A M.R.S.A. §1020-A(8-A).

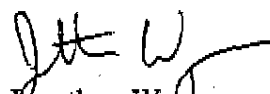
To stop this process, immediately submit the following reports:

- 6-Day Pre-General Report
- 42-Day Post-General Report

Between December 23 and January 12, the Commission staff will send you four notices to alert you to your possible referral to the Attorney General, and the Commission staff will also attempt to contact you by telephone in early January. The first notice will include a blank reporting form which you can use to file the report.

Please telephone Candidate Registrar Andrew Helman at 287-4179 regarding this matter, and inform him whether you will be filing the report or if you believe no report is required. Thank you.

Sincerely,


Jonathan Wayne
Executive Director

January 3
letter

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Article Addressed to:</p> <p>Mr. Christopher McCarthy 10 Fairlawn Avenue Lewiston, ME 04240</p>		<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><i>[Signature]</i> <input checked="" type="checkbox"/> <i>[Signature]</i></p>	
<p>2. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>Print your name and address on the reverse so that we can return the card to you.</p> <p>Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery <i>[Signature]</i></p>	
<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		<p>5. Article Number (Transfer from service)</p> <p>7003 1680 0004 7472 7743</p>	
<p>PS Form 3811, February 2004</p>		<p>Domestic Return Receipt</p> <p>102585-02-1A-1540</p>	



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

December 29, 2004

Mr. Christopher McCarthy
10 Fairlawn Avenue
Lewiston, ME 04240

Re: Delinquent Campaign Finance Reports

Dear Mr. McCarthy:

The Ethics Commission has previously written you regarding your delinquent campaign finance reports, required under the Election Law and not filed. Failure to file a campaign finance report within 30 days of a filing deadline is a Class E Crime under 21-A M.R.S.A. §1020-A(8-A).

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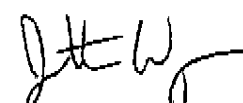
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- 42-Day Post-General Report

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Please telephone Candidate Registrar Andrew Helman at 287-4179 regarding this matter, and inform him whether you will be filing the report or if you believe no report is required. Thank you.

Sincerely,


Jonathan Wayne
Executive Director

CERTIFIED MAIL™

COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0135

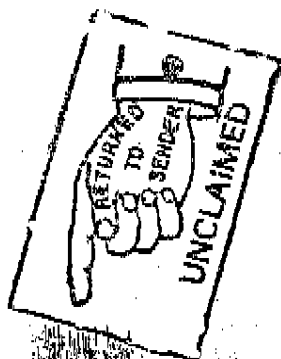


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MAILED FROM ZIP CODE 04330

Mr. Christopher McCarthy
10 Fairlawn Avenue
Lewiston, ME 04203



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2



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

December 27, 2004

Mr. Christopher McCarthy
10 Fairlawn Avenue
Lewiston, ME 04240

Re: Delinquent Campaign Finance Reports

Dear Mr. McCarthy:

The Ethics Commission has previously written you regarding your delinquent campaign finance reports, required under the Election Law and not filed. Failure to file a campaign finance report within 30 days of a filing deadline is a Class E Crime under 21-A M.R.S.A. §1020-A(8-A).

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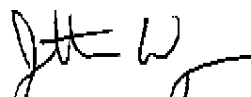
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Sincerely,


Jonathan Wayne
Executive Director



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

December 23, 2004

Christopher McCarthy
10 Fairlawn Avenue
Lewiston, ME 04240

Re: Possible Civil Penalty and Referral to Attorney General

Dear Mr. McCarthy:

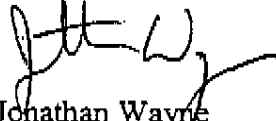
This is to request that you contact the Ethics Commission immediately about your failure to file two campaign finance reports with this office after receiving \$4,032 in public funds under the Maine Clean Election Act. The Commission has written you previously about both reports. In addition, I have left voicemail messages at your home and office, and have not received a response.

Under 21-A M.R.S.A. §1125(12), you were required to report all expenditures made with the Maine Clean Election Act funds. These reports were due on October 27 and December 14 under 21-A M.R.S.A. §1017(3-A). We have received neither report.

The next meeting of the members of the Ethics Commission is scheduled for January 12, 2005 at 9:00 a.m. If the Commission does not receive copies of the required reports by that date, I will recommend to the Commission that you be referred to the Maine State Attorney General for failing to file the required reports. I will further recommend that the Commission assess a civil penalty of up to \$5,000 for your failure to file the reports and will recommend that the Commission request that the Attorney General initiate a civil suit to recover the \$4,032 in funds.

Please telephone me at 287-4179. I will be out of the office during the week of December 27. During that week, please feel free to telephone my colleague Andrew Seaman at the same number. Thank you for your prompt attention to this matter.

Sincerely,


Jonathan Wayne
Executive Director



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

December 17, 2004


Mr. Christopher M. McCarthy
10 Fairlawn Avenue
Lewiston, ME 04240

RE: Delinquent Campaign Finance Report – Due December 14, 2004

Dear Mr. McCarthy:

Our records show that you have not filed your 42-Day Post-General Report. State law [21-A M.R.S.A. § 1020-A] requires that a penalty be assessed for late reports based on the amount of financial activity conducted during the filing period, on the number of calendar days a report is filed late, and on the candidate's filing record. If you raised or spent money during the filing period, you are subject to penalties, which are accruing on a daily basis. Once you have filed your delinquent report, our office will calculate your penalty using the enclosed matrix, and will notify you of the amount of the penalty. Therefore, we urge you to file your report as soon as possible.

Sincerely,


Jonathan Wayne
Executive Director

**IMPORTANT: A CANDIDATE OR TREASURER WHO FAILS
TO FILE A REQUIRED REPORT WITHIN 30 DAYS OF THE
FILING DEADLINE IS GUILTY OF A CLASS E CRIME.
CRIMINAL VIOLATIONS ARE REFERRED TO THE ATTORNEY
GENERAL FOR PROSECUTION.**



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Maine Clean Election Act Candidates and Treasurers

From: Andrew Seaman, Staff Auditor

Date: December 2, 2004

Re: Reminder of Report Due December 14, 2004

Next Campaign Finance Report is Due December 14

The next report for your campaign is due December 14. The report covers all activity beginning on October 22. This report is required even if you did not win your race in the general election. If you have already filed the report, please ignore this reminder.

Returning Maine Clean Election Act Funds You Were Authorized to Spend

Please pay all of your remaining obligations prior to submitting the December 14 report. If you did not spend all of the Maine Clean Election Act funds that you were authorized to use, please return the unspent amount with your December 14 report by submitting a check or money order payable to "Maine Clean Election Fund." The Commission staff will verify that the returned amount is consistent with the expenditures included on your campaign finance reports.

Expenditures over \$1,000 Between October 22 and November 1

Please include in your December 14 report any expenditures of \$1,000 or more that you previously reported to us in a 24-Hour Report.

Goods You Purchased that Could be Converted to Personal Use

Property and equipment that could be used for purposes other than campaigning (e.g., computers or printers) must be liquidated at fair market value and the proceeds must be returned to the Maine Clean Election Fund. This property must be included on Schedule F of your report. Please sell the goods by the time you file the December 14 report. If you are unable to complete the sale by the filing deadline, please telephone me in advance.

Up-to-Date Contact Information

Please remember that in the coming months the Commission may need to send you correspondence relating to your 2004 campaign. If your contact information changes, please make sure you inform the Commission staff.

Questions

Please feel free to call me at 287-7651 if you have any questions.

mailing label
12/2/04 reminder
memo

Mr. Geoffrey Leighton
1355 Royalsborough Road
Durham, ME 04222

Ms. Heidi Leinonen
188 Payne Road
Scarborough, ME 04074

Honorable Arthur L. Lerman
95 Green Street
Augusta, ME 04330

Mr. R. Kenneth Lindell
P.O. Box 543
Stockton Springs, ME 04981

Mr. John H. Linscott
743 Stevens Avenue
Portland, ME 04103

Ms. Donna M. Loring
174 River Road
Richmond, ME 04357

Ms. Deborah A. Loveitt
181 State Street
Gorham, ME 04038

Honorable Jacqueline A. Lundeen
PO Box 471
Mars Hill, ME 04758

Mr. Robert E. Macdonald
6 Jolin Street
Lewiston, ME 04240

Mr. Torbert H. MacDonald
6 Fernald Avenue
York, ME 03909

Mr. W. Bruce MacDonald
656 Back River Road
Boothbay, ME 04537

Mr. William D. MacDonald
343 Winthrop Center Road
Winthrop, ME 04364

Mr. Glen MacWilliams
77 Chases Pond Road
York, ME 03909

Honorable Elaine Makas
10 Sheffield Avenue
Lewiston, ME 04240

Mr. Donald G. Marean
233 Bonny Eagle Road
Hollis, ME 04042-3104

Honorable Boyd Marley
11 Maplewood Street
Portland, ME 04103

Ms. Cathy A. Martin
160 Brissette Road
Caribou, ME 04736

Honorable John L. Martin
P.O. Box 250
Eagle Lake, ME 04739

Mr. David Mastropaolo
12 Fern Avenue
Falmouth, ME 04105

Honorable Arthur F. Mayo
83 Green Street
Bath, ME 04530

Mr. Edward J. Mazurek
65 Beech Street
Rockland, ME 04841

Mr. Michael J. McAlevey
P.O. Box 340
Waterboro, ME 04087

Mr. Christopher M. McCarthy
10 Fairlawn Avenue
Lewiston, ME 04240

Honorable Earle L. McCormick
633 Hallowell-Litchfield Road
West Gardiner, ME 04345

Mr. Jeffrey E. McCulloh
10 Winter Street
Kennebunk, ME 04043

Mr. Howard McFadden
19 Shipyard Road
Dennysville, ME 04628

Mr. Jonathan B. McKane
30 Bay View Road
Newcastle, ME 04553

Ms. Amy L. McKenna

Mr. Paul J. McKenney

Mr. Dennis J. McLellan



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

November 1, 2004

Mr. Christopher M. McCarthy
10 Fairlawn Avenue
Lewiston, ME 04240

Re: Delinquent 6-Day Pre-General Report – Due October 27, 2004

Dear Mr. McCarthy:

Our records show that you have not filed your 6-Day Pre-General Report. State law [21-A M.R.S.A. § 1020-A] requires that a penalty be assessed for late reports based on the amount of financial activity conducted during the filing period, on the number of calendar days a report is filed late, and on the candidate's filing record.

If you raised or spent money during the filing period, you are subject to penalties, which are accruing on a daily basis. Once you have filed your delinquent report, our office will calculate your penalty using the enclosed matrix, and will notify you of the amount of the penalty. Therefore, we urge you to file your report as soon as possible.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jonathan Wayne", is written over a horizontal line.

Jonathan Wayne
Executive Director

**IMPORTANT: A CANDIDATE OR TREASURER WHO FAILS
TO FILE A REQUIRED REPORT WITHIN 30 DAYS OF THE
FILING DEADLINE IS GUILTY OF A CLASS E CRIME.
CRIMINAL VIOLATIONS ARE REFERRED TO THE ATTORNEY
GENERAL FOR PROSECUTION.**

§1017

The reports may either be filed in person with the commission on that date or postmarked on that date. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section.

G. Unless otherwise specified in this subsection, reports must be complete back to the completion date of the previous report. The reports described in paragraph E, if filed with respect to a primary election, are considered previous reports in relation to reports concerning a general election.

H. Reports with respect to a candidate who seeks nomination by petition for the office of Governor must be filed on the same dates that reports must be filed with respect to a candidate who seeks that nomination by primary election.

3. Other candidates. (REPEALED)

3-A. Other candidates. A treasurer of a candidate for state or county office other than the office of Governor shall file reports with the commission and municipal candidates shall file reports with the municipal clerk as follows. Once the first required report has been filed, each subsequent report must cover the period from the completion date of the prior report filed.

A. In any calendar year in which an election for the candidate's particular office is not scheduled, when any candidate or candidate's political committee has received contributions in excess of \$500 or made or authorized expenditures in excess of \$500, reports must be filed no later than 5 p.m. on July 15th of that year and January 15th of the following calendar year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the treasurer of the candidate as of the end of the preceding month, except those covered by a previous report.

B. Reports must be filed no later than 5 p.m. on the 6th day before the date on which an election is held and must be complete as of the 12th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the completion date.

C. Contributions aggregating \$1,000 or more from any one contributor or single expenditures of \$1,000 or more, made after the 12th day before any election and more than 24 hours before 5 p.m. on the day of any election must be reported within 24 hours of those contributions or expenditures, or by noon of the first business day after the contributions or expenditures, whichever is later.

D. Reports must be filed no later than 5 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date.

E. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$50 shown in the reports described in paragraph D must be reported as provided by this paragraph. The treasurer of a candidate with a surplus or deficit in excess of \$50

Oct. 27
reportDec. 14
report

§ 1125

originally distributed under subsection 8, paragraph A, C, E or F, whichever is applicable.

10. Candidate not enrolled in a party. An unenrolled candidate certified by April 15th preceding the primary election is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election candidate and a general election candidate as specified in subsections 7 and 8. For an unenrolled candidate not certified by April 15th at 5:00 p.m. the deadline for filing qualifying contributions is 5:00 p.m. on June 2nd preceding the general election. An unenrolled candidate certified after April 15th at 5:00 p.m. is eligible for revenues from the fund in the same amounts as a general election candidate, as specified in subsections 7 and 8.

11. Other procedures. The commission shall establish by rule procedures for qualification, certification, disbursement of fund revenues and return of unspent fund revenues for races involving special elections, recounts, vacancies, withdrawals or replacement candidates.

* **12. Reporting; unspent revenue.** Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.

13. Distributions not to exceed amount in fund. The commission may not distribute revenues to certified candidates in excess of the total amount of money deposited in the fund as set forth in section 1124. Notwithstanding any other provisions of this chapter, if the commission determines that the revenues in the fund are insufficient to meet distributions under subsections 8 or 9, the commission may permit certified candidates to accept and spend contributions, reduced by any seed money contributions, aggregating no more than \$500 per donor per election for gubernatorial candidates and \$250 per donor per election for State Senate and State House candidates, up to the applicable amounts set forth in subsections 8 and 9 according to rules adopted by the commission.

14. Appeals. A candidate who has been denied certification as a Maine Clean Election Act candidate or the opponent of a candidate who has been granted certification as a Maine Clean Election Act candidate may challenge a certification decision by the commission as follows.

A. A challenger may appeal to the full commission within 3 days of the certification decision. The appeal must be in writing and must set forth the reasons for the appeal.

B. Within 5 days after an appeal is properly made and after notice is given to the challenger and any opponent, the commission shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the commission decision

was improper. The commission must rule on the appeal within 3 days after the completion of the hearing.

C. A challenger may appeal the decision of the commission in paragraph B by commencing an action in Superior Court according to the procedure set forth in section 356, subsection 2, paragraphs D and E.

D. A candidate whose certification by the commission as a Maine Clean Election Act candidate is revoked on appeal must return to the commission any unspent revenues distributed from the fund. If the commission or court find that an appeal was made frivolously or to cause delay or hardship, the commission or court may require the moving party to pay costs of the commission, court and opposing parties, if any.

21A § 1126. Commission to adopt rules

The commission shall adopt rules to ensure effective administration of this chapter. These rules must include but must not be limited to procedures for obtaining qualifying contributions, certification as a Maine Clean Election Act candidate, circumstances involving special elections, vacancies, recounts, withdrawals or replacements, collection of revenues for the fund, distribution of fund revenue to certified candidates, return of unspent fund disbursements, disposition of equipment purchased with clean election funds and compliance with the Maine Clean Election Act. Rules of the commission required by this section are major, substantive rules as defined in Title 5, chapter 375, subchapter II-A.

21A § 1127. Violations

1. **Civil penalty.** In addition to any other penalties that may be applicable, a person who violates any provision of this chapter or rules of the commission adopted pursuant to section 1126 is subject to a civil penalty not to exceed \$10,000 per violation payable to the fund. This penalty is recoverable in a civil action. In addition to any fine, for good cause shown, a candidate found in violation of this chapter or rules of the commission may be required to return to the fund all amounts distributed to the candidate from the fund. If the commission makes a determination that a violation of this chapter or rules of the commission has occurred, the commission shall assess a fine or transmit the finding to the Attorney General for prosecution. Fines paid under this section must be deposited in the fund. In determining whether or not a candidate is in violation of the expenditure limits of this chapter, the commission may consider as a mitigating factor any circumstances out of the candidate's control.

2. **Class E crime.** A person who willfully or knowingly violates this chapter or rules of the commission or who willfully or knowingly makes a false statement in any report required by this chapter commits a Class E crime and, if certified as a Maine Clean Election Act candidate, must return to the fund all amounts distributed to the candidate.

Agenda Item #3



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members and Counsel

From: Jonathan Wayne, Executive Director

Date: July 6, 2005

Re: Late Filing by Hon. Edward R. Dugay

Summary

In the 2004 general election, Rep. Edward R. Dugay was the Democratic nominee for the Maine House of Representatives for District #33. His opponent in the general election was Christopher P. Cambron, the Republican nominee.

The Maine Clean Election Act (MCEA) was designed to prevent MCEA candidates from being outspent by a traditionally financed opponent who can raise and spend unlimited funds. When a traditionally financed candidate's receipts for the general election exceeds the amount of public funds initially received by his MCEA opponent, the State pays an equivalent amount of "matching funds" to the MCEA candidate so that the MCEA candidate can match the spending of the traditionally financed candidate.

To achieve this, the MCEA requires a traditionally financed candidate with a MCEA opponent to file up to four "accelerated" reports stating the traditional candidate's total receipts and expenditures for the general election. The Election Law states that the Commission "shall issue [matching funds] *immediately*" to a MCEA candidate after the Commission receives reports showing that the traditional opponent's receipts have exceeded the initial MCEA payment amount. (21-A M.R.S.A. §1125(9), emphasis added)

The Commission staff has found that Rep. Dugay filed one accelerated report twelve days late and also filed an affidavit containing erroneous information regarding his receipts for the general election. These filings had the effect of delaying Mr. Cambron's receipt of \$1,191 in matching funds until (at the earliest) October 27 – six days before the 2004 general election.

Rep. Dugay has responded by stating that: the misreporting was unintentional; at the time he filed his reports he believed that they were accurate; and that other mitigating factors (discussed below) were present. The Commission staff believes that even if the misreporting was the result of inadequate oversight of campaign staff, negligence, or carelessness, a substantial penalty appears to be merited in this case because Rep. Dugay's opponent likely was significantly disadvantaged by his late receipt of matching funds.

The maximum civil penalty for the violation based on the formula in 21-A M.R.S.A. §1020-A(4-A) is \$30,510. The Commission staff recommends a civil penalty of \$10,170, one-third of the maximum.

Mr. Dugay currently is in his fourth term in the Maine House of Representatives, and cannot run for re-election because of term limits. In the 2004 elections, he received 2,937 votes (65.2%) and Mr. Cambron received 1,565 votes (34.8%).

In the 2002 elections, Rep. Dugay was a traditionally financed candidate with a MCEA opponent, and was required to file accelerated reports. Thus, he should have understood his obligation to monitor his general election receipts and to file accelerated reports in the 2004 general election.

Rep. Dugay has filed late campaign finance reports in previous elections and has paid substantial penalties:

- He was assessed and paid a late penalty of \$262.50 for filing a January 18, 2000 report 42 days late.
- He was assessed and paid a \$1,389.74 penalty for filing a December 12, 2000 report 28 days late.
- He filed his July 2002 post-primary election report six days late, but no penalty was assessed because the report contained no financial activity.
- He was assessed and paid a penalty of \$310.50 for filing his 6-day pre-general election report three days late.
- He filed his July 2003 semiannual report late, but no penalty was assessed because the report contained no financial activity.

Rep. Dugay's Primary Election Cash Balance Available for the General Election

Chapter 3, Section 6(3)(B) of the Commission's Rules states that, for the purposes of calculating matching funds, the amount of unspent primary election funds that a candidate has remaining as of the day of the primary election will be considered a receipt for the general election.

Rep. Dugay responded to the Commission staff's preliminary findings through the attached June 29, 2005 letter from his attorney, Michael K. Mahoney. Section I of the letter states that the campaign's balance as of June 8, 2004 (the primary election) was actually \$397 rather than \$897 as preliminarily found by the Commission staff. Rep. Dugay states that his campaign spent \$500 to William Paquin in mid-2003 to repay a debt for his 2002 campaign. The \$500 payment to Mr. Paquin was not included in reports filed with the Commission, but is consistent with some notations in Rep. Dugay's early 2004 reports regarding his cash balance.

The \$500 expenditure should have been reported in a semiannual campaign finance report filed by Rep. Dugay on January 15, 2004. The omission of the \$500 expenditure is unfortunate and could have caused the Commission to authorize \$500 more in matching funds to Mr. Cambron than he was entitled to spend. The Commission has the option of

considering Rep. Dugay's January 15, 2004 campaign finance report to be late under 21-A M.R.S.A. §1020-A(2) because it did not substantially conform to the disclosure requirements of Chapter 13, Subchapter II of the Election Law. Nevertheless, the Commission staff recommends accepting the incomplete reporting as an unintentional error.

Although Mr. Mahoney's letter states that an invoice for the debt and documentation that the debt was paid in mid-2003 would be attached as Exhibit A, the exhibit was not included with the letter. Provided that acceptable documentation is submitted, the Commission staff is prepared to accept Rep. Dugay's statement that he made the \$500 expenditure to Mr. Paquin in mid-2003. *For the purposes of this memo, the Commission presumes that the \$500 expenditure was made and that Rep. Dugay had a primary election balance of \$397.*

Legal Requirement to File 101% Report and Other Accelerated Reports

Under the Election Law, when a traditionally financed candidate's receipts for the general election exceeds 101% of the amount his or her MCEA opponent received for the election (the "101% Amount"), the traditionally financed candidate is required to file a "101% Report" within 48 hours. (21-A M.R.S.A. §1017(3-B)) The filing of the 101% Report triggers the Commission's first payment of matching funds to the MCEA opponent. For House candidates in the 2004 elections the 101% Amount was \$4,072 (101% of \$4,032, the amount initially received by MCEA candidates running for the House).

In addition to the requirement to file the 101% Report, all traditionally financed candidates with MCEA opponents are required to file three accelerated reports 42 days, 21

days, and 12 days before the election. If the traditional candidate has not raised or spent the 101% Amount, instead of each accelerated report the traditional candidate may file a sworn affidavit stating that the campaign has not received, and has not spent and obligated, more than the 101% Amount.

I have attached a blank form for the accelerated report that includes instructions and the affidavit that is permitted as an alternative for candidates who have not reached the 101% Amount. The same form is used for the 101% Report and for the 42-day, 21-day, and 12-day reports.

Rep. Dugay's Late 101% Report (Delaying Payment of \$146 in Matching Funds to Opponent by 12 days)

The Commission staff has prepared a chart showing the total amounts received each day by Rep. Dugay's 2004 campaign after the primary election, and a running total of his receipts for the general election period. (*see attachment*). The chart presumes that as of June 8, 2004, Rep. Dugay had a post-primary balance of \$397. He received another \$3,960 through October 13, 2005. On that date, Rep. Dugay's general election receipts totaled \$4,357, and for the first time exceeded the 101% Amount (\$4,072).

On October 15, 2005 (48 hours after exceeding the 101% Amount), Rep. Dugay was required to file a 101% Report. *Please note that Rep. Dugay agrees with the staff conclusion that the 101% Report was due on October 15.* (Mahoney letter, p. 2, 2nd ¶). If the report had been filed, the Commission would have begun paying matching funds to Mr. Cambron by authorizing him to spend \$146 on October 15. Instead, Mr. Cambron did not receive this amount until October 27 at the earliest (twelve days later).

False Statement in October 22, 2004 Affidavit (Delaying Payment of \$1,045 in Matching Funds to Opponent by 6 days)

Because Rep. Dugay's receipts exceeded \$4,072 for the general election, he was required to file an accelerated report on October 21 (12 days before the general election) stating his total receipts and expenditures for the general election through October 19. Between October 14th and 19th, he collected \$1,045. If Rep. Dugay had filed an accelerated report as required on October 21, Mr. Cambron would have received an authorization to spend an additional \$1,045 in matching funds on October 21, which was 12 days before the general election. This twelve-day period would have permitted Mr. Cambron considerable flexibility in how to spend the \$1,045 in matching funds.

Instead, on October 22 Rep. Dugay filed a sworn affidavit containing the following language: "Edward Dugay, being duly sworn, says that his campaign has not received, and has not spent or obligated, \$4,072 for the general election." This statement was not accurate. During the 6 ½ week period between September 2, 2004 and October 19, 2004, Rep. Dugay received \$5,005 for the general election – *almost \$1,000 more than the amount referred to in the affidavit*. In addition, Rep. Dugay had \$397 in funds left over as of the primary election, which the affidavit's instructions clearly stated should be counted as a receipt for the general election.

Rep. Dugay states through his attorney that he believed the affidavit to be correct at the time that he signed it (Mahoney letter, page 3). *It would be helpful if, at the July 13 meeting, Rep. Dugay could elaborate on what basis he believed on October 22 that his general election receipts had not exceeded \$4,072.* In any case, the affidavit contains a serious misstatement, which cannot be completely excused by the candidate's inadequate supervision of campaign staff. Candidates (and elected officials in particular) should be

held to a high standard of care when submitting a sworn statement to Maine's campaign finance agency.

Filing of Itemized October 27 Campaign Finance Report; Cambron's Late Receipt of Matching Funds

On October 27, 2004 (the Wednesday before the election), Edward Dugay filed the 6-day pre-general election campaign finance report, which contained itemized lists of his contributions and expenditures. On that date, the Commission staff became aware that Rep. Dugay's receipts exceeded the 101% Amount and that his opponent deserved to receive matching funds.

Because the information required in the 101% Report and the October 21 accelerated report was included in Rep. Dugay's itemized October 27 report, the Commission staff is considering October 27 to be the filing date for the 101% Report and October 21 accelerated report for the purposes of calculating Rep. Dugay's penalty. In actuality, Rep. Dugay filed the 101% Report on Sunday, October 31, 2004 (two days before the election) at the request of the Commission staff.

At some point on or after October 27, 2004, the Commission staff authorized Mr. Cambron by telephone to begin spending matching funds. During the very fast-paced final week before the election, the staff's practice was to authorize candidates to spend matching funds by telephone and to follow-up with a confirming letter. Unfortunately, the staff's records do not indicate the precise date when the telephone call was made to Mr. Cambron, but for the purposes of this memo I will presume that the call was made on October 27.

Notice to Rep. Dugay of His Filing Obligations

The Commission staff believes that Rep. Dugay received adequate notice of his obligation to file the 101% Report and an October 21 accelerated report that stated his receipts for the general election. A list of the reminder letters sent directly to Rep. Dugay and other general notices available to him is attached.

Mitigating Factors Proposed by Rep. Dugay*Lack of Intention to File Late or Erroneous Reports*

Through his attorney, Rep. Dugay argues that his late report and erroneous affidavit were not intentional. He states that he had a good faith belief that his campaign had not in fact received contributions exceeding the 101% Amount, based on the information he had before him at the time. He states that better bookkeeping and closer oversight of campaign staff likely would have prevented the errors. (Mahoney Letter, Section II.)

Rep. Dugay's lack of intentionality certainly is a relevant point. Unfortunately, Mr. Mahoney's letter did not specifically disclose on what basis Rep. Dugay believed his receipts had not exceeded the 101% Amount, which makes it more difficult for the Commission to judge the degree to which this is a mitigating factor. *In the view of the Commission staff, it would be helpful if Rep. Dugay or his counsel present more detailed information at the July 13 meeting regarding his basis for believing his receipts had not exceeded the 101% Amount.*

In any case, some substantial penalty appears to be warranted even if the misreporting was the result of carelessness or negligence rather than intentional wrongdoing. The effect on Rep. Dugay's opponent was the same: Mr. Cambron did not

receive a significant amount of matching funds (\$1,195) on time, which presumably disadvantaged his ability to spend the funds.

Each candidate should be held accountable for the overall conduct of his or her campaign, and must adequately oversee campaign staff. Rep. Dugay's responsibility in accurately filing the October 21 accelerated report was to simply keep track of his campaign's receipts for the prior 6 ½ weeks and to add that amount to his unspent primary election funds. Although Rep. Dugay had received \$5,005 during that 6 ½ period, he filed a sworn affidavit stating that his campaign had not received \$4,072 for the general election. When he signed that affidavit, his duty was to make sure he had before him information that he *knew* to be reliable, rather than partial or incomplete information supplied by campaign staff.

The matching funds system is designed to keep candidates on equal footing, and is based each candidate's honest, timely reporting of campaign receipts. It is impossible to administer this system fairly if serious misreporting is viewed as a small matter – even if the misreporting is unintentional. Candidates should be held to a higher standard.

Proposed Mitigating Factor: Opponent's Opportunity to Spend Funds

Rep. Dugay argues that Mr. Cambron had a reasonable amount of time to spend the matching funds he received. The Commission staff disagrees. Under the matching funds provision enacted by Maine voters, Mr. Cambron was entitled to receive matching funds "*immediately*" upon Rep. Dugay's reporting that he exceeded the \$4,072 amount. (21-A M.R.S.A. §1125(9), emphasis added).

Had Rep. Dugay filed the proper reports on time, Mr. Cambron would have been authorized to spend \$146 in matching funds on October 15 (eighteen days before the election) and another \$1,045 on October 21 (twelve days before the election). These payments would have been sufficient for Mr. Cambron to spend the total of \$1,191 in a variety of ways of his choosing, including mailing printed campaign literature if he desired. There is a significant practical difference between receiving \$1,045 twelve days before the election and receiving that amount six days before the election. The receipt of those funds only six days before the election could certainly have foreclosed the option of spending the funds for certain purposes, including printed campaign literature. In fact, Mr. Cambron's opportunity to spend the funds could have been even less than six days, if the Commission staff was unable to make the authorization call on October 27.

Proposed Mitigating Factor: Both Candidates' Total Expenditures Were Comparable

Rep. Dugay argues that Mr. Cambron's total post-primary expenditures of \$6,728.78 were comparable to Rep. Dugay's total expenditures of \$7,341.41, and that the difference between these amounts is small. The Commission should consider not just the total amount spent by Mr. Cambron, but also how the timing of his receipt of public funds impacted his opportunity to spend them. Had Mr. Cambron received the funds earlier, he may have chosen to spend more of the funds or to spend the funds in different ways. The Commission staff also disagrees that a difference of \$600 is small from the perspective of a MCEA candidate for the Maine House of Representatives. The MCEA holds out the promise that MCEA candidates will be on the equal footing as traditionally financed opponents.

Proposed Mitigating Factor: Rep. Dugay's Violations Did Not Alter the Election's Result

Rep. Dugay argues that he received over 65% of the vote and that it seems improbable that Mr. Cambron would have won the election had Rep. Dugay filed his reports on time. This does not in any way excuse Rep. Dugay's late filing. Even if it is unlikely that earlier matching funds would have caused Mr. Cambron to win the election, the Election Law entitled him to the opportunity to try. If the Commission agrees with Rep. Dugay that the one-sided election result is a mitigating factor, the staff notes that this factor is adequately reflected in the recommended penalty which is one-third of the maximum penalty.

Penalty Provision in the Election Law

The Election Law contains a special provision governing civil penalties for the late filing of accelerated reports:

The penalty for late filing of an accelerated campaign finance report as required in section 1017, subsection 3-B may be up to but no more than 3 times the amount by which the contributions received or expenditures obligated or made by the candidate, whichever is greater, exceed the applicable Maine Clean Election Fund disbursement amount, per day of violation. The commission shall make a finding of fact establishing when the report was due prior to imposing a penalty under this subsection. A penalty for failure to file an accelerated campaign finance report must be made payable to the Maine Clean Election Fund. In assessing a penalty for failure to file an accelerated campaign finance report, the commission shall consider the existence of mitigating circumstances. For the purposes of this subsection, "mitigating circumstances" has the same meaning as in subsection 2.

21-A M.R.S.A. §1020-A(4-A) (emphasis added). This formula was amended by the Legislature in November 2002, and presumably reflects the Legislature's intentions

regarding the range of penalties appropriate for the late filing of accelerated reports. The mitigating circumstances in 21-A M.R.S.A. §1020-A(2) are as follows:

The commission may waive a penalty if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part;
- B. An error by the commission staff;
- C. Failure to receive notice of the filing deadline; or
- D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

You may wish to consider Rep. Dugay's total expenditures (\$7,341.41) as a factor when deciding upon the appropriate penalty to assess in this matter.

Title 21-A M.R.S.A. §1020-A(5) imposes a maximum on any penalty assessed for the late filing of an accelerated report of three times the unreported amount, but this maximum *only applies in cases in which the unreported amount is less than \$5,000 and the Commission finds that the candidate has established, by a preponderance of the evidence, that a bona fide effort was made to file an accurate and timely report.* In this case, the amount of the "bona fide maximum" would be \$4,110, which is three times \$325 plus \$1,045. Given the response to date by the candidate (*i.e.*, Mr. Mahoney's letter), the staff proposes that the bona fide maximum is not applicable in this case. *If, after hearing Rep. Dugay's oral presentation on July 13, you believe he has established by a*

preponderance of the evidence that he made a bona fide effort to file the reports in accordance with statutory requirements, you may assess a penalty up to \$4,110.

Recommended Findings of Fact and Penalties

The Commission staff recommends that the Commission make the following findings of fact regarding the 101% Report:

- Rep. Dugay was required to file the 101% Report on October 15, 2004.
- The 101% Report should have disclosed total general election receipts of \$4,357 as of October 13, 2005.
- The unreported amount was \$325.
- This report was filed twelve days late.

The Commission staff recommends that the Commission make the following findings of fact regarding the accelerated report that was required to be filed on October 21, 2004:

- Rep. Dugay was required to file an accelerated report on October 21, 2004.
- The report should have disclosed total general election receipts of \$5,402 as of October 19, 2005.
- The unreported amount was \$1,045.
- This report was filed six days late.

The staff recommends that, in calculating the penalty for each late report, the Commission use the daily penalty amount that is *equivalent to* the unreported amount, as shown in the chart below.

	Recommended Daily Penalty (1 x Unreported Amount)	Number of Days Late	Recommended Penalty
101% Report	\$325	12	\$3,900
October 21, 2004 Report	\$1,045	6	\$6,270
Total			\$10,170

It should be noted the recommended penalty of \$10,170 is one third of \$30,510 the maximum penalty allowed under 21-A M.R.S.A. §1020-A(4-A) if the Commission used

the maximum daily penalty amount of three times the unreported amount. *You have the statutory authorization to select a daily penalty amount that is lower than the unreported amount, which would result in a penalty of less than \$10,170. This might be appropriate, for example, if Rep. Dugay demonstrates convincingly that he acted in good faith in reliance on faulty advice from campaign staff.*

The Commission staff does have some concern that the recommended penalty of \$10,170 could be viewed as severe by those who are unfamiliar with the factual circumstances of this case. Nevertheless, it believes the recommended amount is appropriate based upon a number of factors:

- Rep. Dugay's misreporting delayed the Commission's payment of a substantial amount of matching funds (\$1,191) to his opponent until six days before the election (at the earliest).
- The Commission's determination in this matter should demonstrate that candidates' reports must be timely and complete in order for the matching funds system to work properly.
- Rep. Dugay was a traditionally financed candidate with a MCEA opponent in the 2002 elections, and should have understood the requirement to file accelerated reports in the 2004 elections.
- Submitting a sworn affidavit regarding total campaign receipts that was mistaken by more than \$1,000 suggests a lack of personal commitment by Rep. Dugay to submit accurate filings. Candidates – particularly elected officials – should be held to a high standard.
- The recommended penalty of \$10,170 demonstrates that unintentional violations may be viewed seriously by the Commission, particularly if they result in delays in the payment of matching funds. Clear evidence of intentional wrongdoing in this case would have merited a larger penalty.
- Because this violation disadvantaged an opponent, it is more serious than the misconduct committed by 2004 candidate Christopher McCarthy which resulted in total penalties of \$8,967.85.

Thank you for your consideration of these recommendations.

Ethics Commission
2004 Election
Accelerated Report analysis
Updated 07/06/05

Edward Dugay

		<u>Daily Amount</u>	<u>Total for General Election</u>
Balance forward	6/9/2004	897	897
Adjustment (Paid Debt)		(500)	397
			397
	09/02/04	500	897
	09/10/04	500	1,397
	09/15/04	1,000	2,397
	09/18/04	250	2,647
	09/20/04	25	2,672
	09/22/04	235	2,907
	09/23/04	250	3,157
	09/24/04	250	3,407
	09/28/04	100	3,507
	09/29/04	250	3,757
	10/05/04	50	3,807
	10/05/04	250	4,057
	10/13/04	300	4,357
	10/14/04	20	4,377
	10/16/04	325	4,702
	10/18/04	250	4,952
	10/19/04	450	5,402
	10/20/04	1,150	6,552
	10/21/04	500	7,052

PretiFlaherty

MICHAEL K. MAHONEY
mmahoney@preti.com

June 29, 2005

VIA HAND DELIVERY

Jonathan Wayne, Director
Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333-0135

RE: Matter of Rep. Edward DuGay

Dear Director Wayne:

Please accept, on behalf of my client State Representative Edward DuGay, the following written response to a matter pending before the Ethics Commission regarding Rep. DuGay's campaign finance reporting during the 2004 election cycle. It is my understanding that this matter will be considered by the full Commission during its July 13, 2005 meeting.

BACKGROUND

In 2004, Rep. DuGay, a three-term House member representing House District 33, was opposed in the general election by Republican candidate Christopher Paul Cambron. Mr. Cambron was publicly-financed, while Rep. DuGay ran as a traditional, privately-financed candidate. Neither candidate had a primary opponent. On November 2, 2004, Rep. DuGay defeated Mr. Cambron, by a 2,937 to 1,565 margin (or 65.2% to 34.8%) and is now serving his fourth term in the Maine House.

It is my understanding that following the election, the Commission commenced an investigation into whether Rep. DuGay filed a campaign finance report required by 21-A M.R.S.A. § 1017 (3-B)(A) in an untimely manner. Under state law, that report was required to be filed within 48 hours of Rep. DuGay's receipt of campaign contributions exceeding 101% of the general election allocation provided to Mr. Cambron under MCEA. According to Commission records, Rep. DuGay filed the 101% report on October 31, 2004, but had provided the Commission with actual notice that his campaign receipts had exceeded the 101% level four days earlier, on October 27th, when he filed his 6-Day Pre-General Report. On November 1, 2004, five days after being notified of the level of Rep. DuGay's receipts, the Commission released \$2594.00 in matching funds to Mr. Cambron. It is unknown to Rep. DuGay whether the Commission notified Mr. Cambron of the level of Rep. DuGay's receipts prior to issuing the matching funds.

The Commission also investigated whether Rep. DuGay erroneously stated via affidavits dated, on October 14th and October 22nd, respectively, that his campaign had not yet received,

PRETI FLAHERTY
Jonathan Wayne, Director
June 29, 2005
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and had not spent or obligated \$4072 for the general election. See 21-A M.R.S.A. § 1017 (3-A)(B).

DISCUSSION

I. Rep. DuGay's Campaign Finance Reports Were Not As Late as The Commission's Preliminary Findings Suggest.

Rep. DuGay does not dispute that he failed to file the 101% Report in a timely manner. He does dispute, however, the Commission's preliminary finding that he should have filed the report on October 1, 2005 (i.e., within 48 hours of the date on which he received more than \$4072.00 (or 101% of the MCEA allocation). Instead, Rep. DuGay contends that his campaign did not receive \$4072 until October 13, 2005 and that, in turn, his 101% report was not required to be filed until October 15, 2005. The discrepancy between the Commission's preliminary findings and Rep. DuGay's position lies with an \$897.00 amount that, according to the Commission, was in Rep. DuGay's campaign account at the beginning of the 2004 general election period. That amount consisted of a \$397.00 campaign balance forwarded from Rep. DuGay's 2002 re-election, as well as two contributions of \$250.00 each made to Rep. DuGay in 2003. Nearly all of that amount, however, was expended in mid-2003 to retire a \$500.00 campaign debt from 2002 to William Paquin, who had reproduced an ad supporting Rep. DuGay's 2002 campaign on hundreds of restaurant placemats that he sold.¹ Attached hereto as Exhibit A is an invoice documenting the debt and the fact that it was paid.

Given that Rep. DuGay expended \$500.00 to retire this 2002 debt to Mr. Paquin, that amount should not fairly be considered part of his starting 2004 campaign balance. Deducting \$500.00 from Rep. DuGay's 2004 campaign balance moves back the date on which contributions to his 2004 campaign exceeded the 101% threshold. Specifically, with these funds excluded, Rep. DuGay did not receive \$4072.00 in contributions until October 13th, making his 101% report to the Commission due 48-hours later, on October 15th.

As you recall, the Commission was effectively notified of the fact that Rep. DuGay's contributions exceeded the 101% level when Rep. DuGay filed his 6-Day Pre-General Report twelve days later, on October 27th. Thus, while Rep. DuGay was still noticeably tardy (twelve days) in informing the Commission about the level of his campaign contributions, it is a far cry from the Commission's preliminary finding that Rep. DuGay was a full 30 days late in notifying the Commission.

¹ Unfortunately, this outstanding obligation of Rep. DuGay's did not appear on his 2002 campaign finance reports because he was not aware at that time that he filed the reports that Mr. Paquin had gone ahead and placed the ads. It was only after the fact that Mr. Paquin notified Rep. DuGay of the ads and requested payment in the amount of \$500.00.

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Jonathan Wayne, Director
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II. Rep. DuGay's Untimely Filing Was Unintentional.

Moreover, Rep. DuGay's failure to file the 101% report in a timely manner, and his filing of erroneous affidavits on October 14 and October 22, were neither intentional nor done in bad faith. Rather, they were each the result of a good faith belief, based on the information he had before him at the time of the filing, that his campaign had not in fact received contributions exceeding 101% of the MCEA general allocation. Better bookkeeping and closer oversight of campaign staff likely would have prevented these errors.

III. There Are Factors Mitigating Against the Commission's Imposition of a Severe Fine In This Matter.

Finally, there are several factors in play in this matter, of which the Commission should be aware, that significantly mitigated any harm that Rep. DuGay's untimely filing caused to Mr. Cambron, including the following:

1. Mr. Cambron Had Reasonably Opportunity to Expend the Matching Funds.

This does not appear to be a case where a late campaign finance filing left an MCEA candidate with no time to utilize matching funds. According to Mr. Cambron's own campaign finance reports for the 2004 general election, his campaign's expenditures exceeded the MCEA allocation of \$4032.00 on October 27, 2004. On that date, he made an expenditure of \$1870.00 to Clear Channel Radio, along with two other smaller expenditures totaling \$50.00. Those three expenditures, totaling \$1920.00, collectively increased Mr. Cambron's total expenditures for the general election period to 4,728.78. It can reasonably be assumed that, in making these October 27th expenditures, Mr. Cambron knew that he was exceeding his MCEA allocation and that the Commission would be issuing him matching funds in the amount of \$2594.00 as a result of the contents of Rep. DuGay's 6-Day Pre-General Report filed on the same day. However, Mr. Cambron did not make any expenditures whatsoever on October 28, 29, 30 or 31, and made only a single \$25.00 expenditure on November 1. Indeed, it was not until election day, seven days after he likely learned of the availability of matching funds, that Mr. Cambron made any other significant expenditures -- and those were to pay his campaign staff (two totaling \$900). Thus, any claim that Mr. Cambron lacked sufficient time before the election to expend the matching funds lacks a factual basis. The evidence before the Commission can reasonably be interpreted to indicate that Mr. Cambron had seven days to expend these funds prior to the election, but chose not to do so.

2. Mr. Cambron's Total Campaign Expenditures Were Comparable to Those of Rep. DuGay.

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Jonathan Wayne, Director
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According to his filings with the Commission, Mr. Cambron expended a total of \$6728.78 between June 9, 2004 and November 2, 2004. Mr. DuGay's expenditures during the same time period were \$7341.41. The small difference in their total expenditures suggests that their campaigns ran at relatively equal strengths, putting neither candidate at a significant disadvantage to the other. Moreover, given that Mr. Cambron had ample time to make additional expenditures during the all-important seven-day period immediately preceding the campaign, but chose not to do so, any disadvantage he had in campaign spending appears to have largely been the result of his own inaction.

3. Any Violation By Rep. DuGay Likely Did Not Alter the Election's Results.

Finally, it appears unlikely that Rep. DuGay's untimely filing had any appreciable impact on the ultimate outcome of the election. Rep. DuGay garnered over 65% of the vote, winning majorities in all nine of the communities within House District 33. Given the relatively wide margin of victory, it seems improbable that, had Rep. DuGay filed the required reports in a timely manner, the election's outcome would have been materially different. While the margin of victory by no means validates Rep. DuGay's violations in this matter, Rep. DuGay believes that it should be weighed along with several other factors in gauging the harm suffered by Mr. Cambron.

CONCLUSION

Rep. DuGay recognizes the seriousness of this situation, and regrets that he was not more diligent in filing his campaign's reports during the 2004 general election cycle. For the reasons stated above, however, Rep. DuGay respectfully submits that several facts mitigate against the imposition of the maximum penalty in this case, and requests that the Commission impose a fine commensurate with the level of harm Rep. Dugay's mis-filings actually caused.

Sincerely,



Michael K. Mahoney

cc: Hon. Edward DuGay

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
Mail: 135 State House Station
Office: 242 State Street
Augusta, Maine 04333-0135
Tel: (207) 287-4179 FAX: (207) 287-6775

MAINE CLEAN ELECTION ACT
NON-PARTICIPATING CANDIDATE ACCELERATED REPORT
FOR THE 2004 GENERAL ELECTION

PLEASE CIRCLE TYPE OF REPORT:

101%
(Due: See Reverse)

42-DAY
(Due 9/21)

21-DAY
(Due 10/12)

12-DAY
(Due 10/21)

CANDIDATE IDENTIFICATION

Name of Non-Participating Candidate	Telephone Number
Mailing Address	Office Sought
City, Zip Code	District
Name of Opposing MCEA Candidate	

CONTRIBUTIONS TO CANDIDATE OR CANDIDATE'S COMMITTEE
(please include cash balance as of June 8 primary election,
and see reverse side for instructions)

Total Campaign Receipts (Cash Contributions, Loans, and Value of In-Kind Contributions) Received to Date for the General Election

EXPENDITURES AND OBLIGATIONS BY CANDIDATE OR CANDIDATE'S COMMITTEE

Total Campaign Expenditures and Unpaid Obligations Made to Date for the General Election

I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

Signature of Non-Participating Candidate

Date

Please see instructions on reverse side

**INSTRUCTIONS FOR FILING ACCELERATED REPORTS
BY GENERAL ELECTION CANDIDATES NOT PARTICIPATING IN THE
MAINE CLEAN ELECTION ACT**

101% REPORT: Any candidate for Governor, State Senate or State House of Representatives who is not certified as a Maine Clean Election Act candidate and who receives, or spends and obligates, more than 1% in excess of the primary or general election distribution amounts for a Maine Clean Election Act candidate in the same race shall file, within 48 hours of that event, a report detailing the candidate's total campaign contributions, obligations and expenditures to date.

42-DAY, 21-DAY, and 12-DAY REPORTS: A non-participating candidate with a Maine Clean Election Act opponent must file reports on the 42nd, 21st, and 12th days before the election stating the campaign's total campaign receipts, and total campaign expenditures and obligations, as of two days before the deadline. Please see the reporting schedule below for the deadlines and reporting periods. Instead of filing each report, the candidate may file an affidavit by each deadline attesting that the candidate has not received, or spent and obligated, the 101% amount.

CALCULATING CONTRIBUTIONS FOR GENERAL ELECTION:

For candidates in the primary election, please add your cash balance as of June 8 (the day of the primary election) and your cash contributions, in-kind contributions, and loans received after June 8. If you have repaid any loans since the primary election, please telephone staff auditor Andrew Seaman at 287-7651 to discuss how to account for the funds that were used for these repayments. For replacement and unenrolled candidates, please include all receipts since the beginning of your campaign.

101% AMOUNTS:

\$16,959 for Senate candidates (101% of initial distribution amount of \$16,791)

\$4,072 for House candidates (101% of initial distribution amount of \$4,032)

REPORTING SCHEDULE:

<u>Type of Report</u>	<u>Due Date</u>	<u>Period Included</u>
101% REPORT	Within 48 hours of receiving or spending 101% amount (see above)	Date of receiving or spending more than 1% amount (see above)
42-DAY REPORT	September 21, 2004	Through September 19, 2004
21-DAY REPORT	October 12, 2004	Through October 10, 2004
12-DAY REPORT	October 21, 2004	Through October 19, 2004

FACSIMILE TRANSMISSION

A report may be provisionally filed by faxing a copy of the signed report to the Commission, as long as the original of the same report is received by the Commission **within 5 calendar days** thereafter. The Commission's fax number is (207) 287-6775.

IMPORTANT

The summary information contained in this report must be included on the appropriate schedule of the next required detailed report (i.e., 6-day pre-election or 42-day post-election, as appropriate).

**STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES**

Mail: 135 State House Station

Office: 242 State Street

Augusta, Maine 04333

Tel: (207) 287-4179 Fax: (207) 287-6775

NON-PARTICIPATING CANDIDATE ACCELERATED REPORT

**AFFIDAVIT FOR HOUSE CANDIDATES
IN THE NOVEMBER 2, 2004 GENERAL ELECTION**

STATE OF _____

COUNTY OF _____

_____, being duly sworn, says that his or
her campaign has not received, and has not spent or obligated, \$4,072 for the general
election.

(Signature of Affiant)

Sworn to before me, this _____ day of _____ 2004.

(Notary Public/Attorney at Law)

**STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES**

Mail: 135 State House Station

Office: 242 State Street

Augusta, Maine 04333

Tel: (207) 287-4179 Fax: (207) 287-6775

NON-PARTICIPATING CANDIDATE ACCELERATED REPORT

**AFFIDAVIT FOR SENATE CANDIDATES
IN THE NOVEMBER 2, 2004 GENERAL ELECTION**

STATE OF _____

COUNTY OF _____

_____, being duly sworn, says that his or
her campaign has not received, and has not spent or obligated, \$16,959 for the general
election.

(Signature of Affiant)

Sworn to before me, this _____ day of _____ 2004.

(Notary Public/Attorney at Law)

Notices to Rep. Dugay of Obligation to File Accelerated Reports

Reminder Notices Sent Directly to Rep. Dugay

- On August 20, 2004, the Commission sent a letter to Rep. Dugay outlining his obligations to file a 101% Report and the three other accelerated reports on September 21, October 12, and October 21. The letter specifically mentioned the obligation to include in the accelerated reports any unspent primary election funds.
- The blank accelerated report forms that accompanied the August 20 letter contained the filing deadlines and clear instructions that unspent primary election funds should be considered receipts for the general election.
- On September 16, 2004, the staff mailed Rep. Dugay a reminder notice for the September 21 accelerated report, which contained the advice: "When you fill out the amount of campaign receipts for the general election, please include your campaign's cash balance as of June 8 (the date of the primary election)."
- On October 6 and 18, 2004, the Commission sent two more reminder notices to Rep. Dugay of the October 12 and October 21 accelerated reports. That letter specifically included *in italics* the same advice regarding the primary election balance included in the September 16 reminder letter.

General Reminders Available to Rep. Dugay

Advice regarding the requirement to file accelerated reports was contained in:

- the filing schedule mailed to all traditionally financed candidates;
- pages 25-26 of the Candidate's Guide to Running for Office in Maine; and
- a special page on the Commission Web site for traditionally financed candidates with MCEA opponents.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Please note:
this analysis
is now moot
in light of Mr.
Mahaney's 6/29/05
letter. JW

April 2, 2005

Honorable Edward Dugay
PO Box 254
CherryField, ME 04622

Dear Rep. Dugay:

This letter replaces my previous letter of March 15, 2005. The Ethics Commission staff is completing its review of campaign finance reports to verify that they were filed on time. It appears that your 2004 campaign filed three reports late and that the Commission may assess a substantial civil penalty for the late filings.

The Commission staff has examined when your receipts for the 2004 general election exceeded the 101% amount of \$4,072, which required the filing of the 101% Report. In calculating the amount of your general election receipts, we have added your cash balance as of the date of the primary election (June 8, 2004) and any receipts after the primary election.

Under the Election Law, when your general election receipts exceeded the 101% amount, you were required to file a 101% Report within 48 hours which would result in the payment of matching funds for your opponent. The staff's preliminary finding is that your receipts exceeded the 101% amount on September 29, 2004 which required the filing of the 101% Report on October 1. This report was not filed until October 31, when you faxed it at the request of our staff auditor Andrew Seaman. We also find preliminarily that as of October 12 and 21, you should have filed accelerated reports stating your total receipts for the general election. These reports apparently also should have triggered matching funds to your opponent. Instead, you filed notarized affidavits on those dates stating that your general election receipts were less than \$4,072. The Commission did not receive a report stating your total receipts for the general election until October 27, 2004, when it received your 6-day pre-election report. This significantly delayed your opponent's receipt of matching funds.

Based on this finding, the staff of the Commission is recommending that the Commission decide at its next meeting whether to assess a penalty against you for the late filing of your 101% Report, October 12 and October 21 reports. The finding of violation and penalty will be considered at the Commission meeting on Friday, April 8 at 9:00 a.m. at the Commission Office at 242 State Street in Augusta. Pursuant to 21-A M.R.S.A. §1020-A(4), the maximum penalty for the late filings is \$55,260. It is likely that at the April 8 meeting, the Commission staff will recommend a civil penalty that is significantly less than this amount.

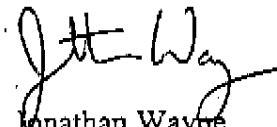
Rep. Edward Dugay

- 2 -

April 2, 2005

You are invited to respond to the proposed finding of violation and penalty by speaking to the Commission members at the April 8 meeting. If you have any additional information to provide to the staff to rebut the finding of violation or if you have questions about this matter, please telephone me at 287-4179. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Wayne", written in a cursive style.

Jonathan Wayne
Executive Director



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0131

February 7, 2005

Honorable Edward Dugay
PO Box 254
Cherryfield, ME 04622

Dear Rep. Dugay:

The Ethics Commission staff is conducting its routine review of campaign finance reports to verify that they were filed on time. We have examined when your receipts for the 2004 general election exceeded the 101% amount of \$4,072, which required the filing of the 101% Report.

The staff's preliminary finding is that your receipts exceeded the 101% amount on 09/24/04 which required the filing of the 101% Report on 09/27/04. If that is correct, we will consider the report to be 30 days late because we received your 6 Day Pre General Report on 10/27/04. In reaching this preliminary determination, we are adding your cash balance as of the date of the primary election (June 8, 2004) and any receipts after the primary election.

We would like to give you every opportunity to provide input into the staff's determination whether the 101% Report was filed late. If you disagree with our preliminary finding or have any information that is relevant, please telephone me at 287-4179. For example, if any of your expenditures after June 8 were for *primary* election goods and services, we would likely reduce your general election receipts by that amount.

If the Commission does not receive a response from you, the staff will bring the apparent violation to the attention of the members of the Commission at their March meeting, along with a proposed penalty that is determined by a formula in the Election Law. (21-A M.R.S.A. §1020-A(4)). The date of that meeting has not been scheduled. You will have an opportunity to respond to the proposed finding of violation and penalty in writing or in person at the meeting.

Thank you for any information you can provide.

Sincerely,

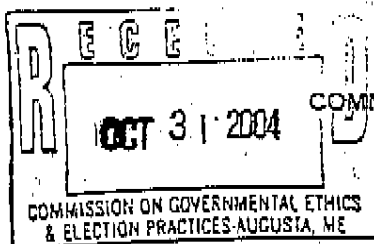
A handwritten signature in cursive script that reads "Andrew Seaman".

Andrew Seaman
Commission Auditor

APR-18-2002 10:42P FROM:

T 2876775

P:1/1



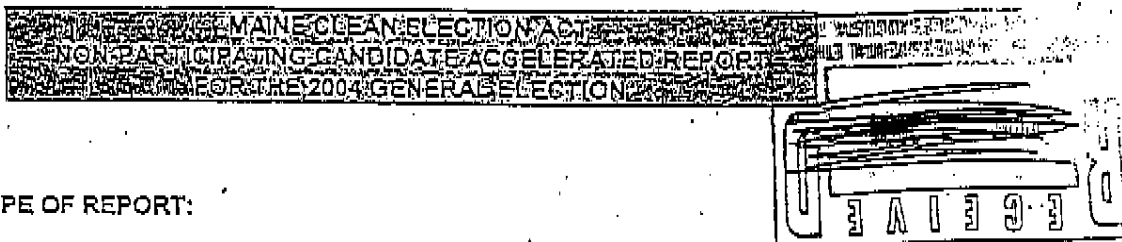
STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Mail: 135 State House Station

Office: 242 State Street

Augusta, Maine 04333-0135

Tel: (207) 287-4179 FAX: (207) 287-6775



PLEASE CIRCLE TYPE OF REPORT:

101%

(Due: See Reverse)

42-DAY

(Due 9/21)

21-DAY

(Due 10/12)

12-DAY

(Due 10/21)

CANDIDATE IDENTIFICATION

Name of Non-Participating Candidate <i>Edward Dugay</i>	Telephone Number <i>598 7548 cell</i>
Mailing Address <i>POB 254 Cherryfield</i>	Office Sought <i>House</i>
City, Zip Code <i>Cherryfield ME 04622</i>	District <i>33</i>
Name of Opposing MCEA Candidate <i>Chris CAMBERON</i>	

CONTRIBUTIONS TO CANDIDATE OR CANDIDATE'S COMMITTEE

(please include cash balance as of June 8 primary election,
and see reverse side for instructions)

Total Campaign Receipts (Cash Contributions, Loans, and Value of In-Kind Contributions) Received to Date for the General Election <i>\$4305.00 10/18/04</i>
--

EXPENDITURES AND OBLIGATIONS BY CANDIDATE OR CANDIDATE'S COMMITTEE

Total Campaign Expenditures and Unpaid Obligations Made to Date for the General Election <i>\$5759.56 10/18/04</i>

I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

Signature of Non-Participating Candidate

Date

Oct 27 04 04:12p

207-546-2799

p.1

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Mail: 135 State House Station, Augusta, Maine 04333-0135

Office: 242 State Street, Augusta, Maine

Tel: (207) 287-4179 Fax: (207) 287-6775

Web site: www.maine.gov/ethics

Electronic Filing: www.maine.campaignfinance.com

2004 CAMPAIGN FINANCE REPORT -
PRIVATELY FINANCED LEGISLATIVE
AND COUNTY CANDIDATES

(Please Complete ALL Entries)

Name of CANDIDATE EDWARD DUGAYMailing address POB 254City, zip code Cherryfield ME 04622Telephone number 5987548 Fax _____ E-mail eddiedugay@midmaine.comName of Candidate's Committee, if any Comm to Re-electElection Year 2004 Office Sought HOUSE District Number 33Name of TREASURER ELDIC DUGAY

Mailing address _____

City, zip code _____

Telephone number _____ Fax _____ E-mail _____

CHECK IF CHANGED
SINCE PREVIOUS
REPORT ☐CHECK IF CHANGED
SINCE PREVIOUS
REPORT ☐

Type of Report (check applicable):

- () January 2004 Semiannual*
() 6-Day Pre-Primary
() 42-Day Post-Primary
(x) 6-Day Pre-General
() 42-Day Post-General

Due date:

- January 15, 2004
June 2, 2004
July 20, 2004
October 27, 2004
December 14, 2004

Period included:

- Beginning of campaign - December 31, 2003
Last Report (if any) - May 27, 2004
May 28, 2004 - July 13, 2004
July 14, 2004 - October 21, 2004
October 22, 2004 - December 7, 2004

*This report is required only for candidates who have raised or spent more than \$500 during 2003.

() Amendment to: _____

() Other (specify): _____

I CERTIFY THAT I HAVE EXAMINED THIS REPORT AND TO THE BEST OF MY KNOWLEDGE IT IS TRUE, CORRECT AND COMPLETE.

Eldic Dugay
Treasurer's Signature

10/27/04
Date

Eldic Dugay
Candidate's Signature

10/27/04
Date

Oct 27 04 04:13p

207-546-2799

P-2

Edward Dugay
CANDIDATE'S FULL NAME

Page 1 of 5
(Schedule A only)

SCHEDULE A
CASH CONTRIBUTIONS

Itemize each cash contribution of more than \$50 from the same source during the reporting period. Total contributions from the same source may not exceed \$250 in any election. The primary and general elections are considered separate elections. Do NOT include in-kind contributions on this schedule.

DATE RECEIVED	CONTRIBUTOR'S NAME, ADDRESS, ZIP (totaling more than \$50 this report period)	OCCUPATION, PRINCIPAL PLACE OF BUSINESS (as applicable)	TYPE (use key code)	AMOUNT	TOTAL (from same source this election)
9/2/04	MAINE MEDICAL ASSOCIATION	Augusta	4	250.00	250.00
9/2/04	MAINE DENTAL ASSOC.	Augusta	4	250.00	250
9/10/04	TERESA FISCHER BUSINESS PAC	Pasquet Island	4	250	250
9/10/04	MAINE BANKERS ASSOC.	Augusta	4	250	250
9/15/04	WOLFESE ENERGY	Columbia	3	250	250
9/15/04	WOLFESE WEALTH	Columbia	3	250	250
9/15/04	MAINE OIL DEALERS	Brunswick	4	250	250
9/15/04	MAINE AQUACULTURE ASSOC	Augusta	3	250	250
9/18/04	BOB DUPLESSIE	Augusta	6	250	250
9/20/04	GLEN CUMMINGS	Portland	6	25.	25.
1. Total cash contributions (this page only)				2275.	

Key Codes:

- 1 = Candidate and Candidate's Spouse
- 2 = Other Individuals
- 3 = Commercial Sources (corporations, etc.)

- 4 = Political Action Committees
- 5 = Political Party Committees
- 6 = Other Candidates and Candidate Committees

Oct 27 04 04:13p

207-546-2799

p.3

Edward Dugay
CANDIDATE'S FULL NAME

Page 2 of 5
(Schedule A only)

SCHEDULE A
CASH CONTRIBUTIONS

Itemize each cash contribution of more than \$50 from the same source during the reporting period. Total contributions from the same source may not exceed \$250 in any election. The primary and general elections are considered separate elections. Do NOT include in-kind contributions on this schedule.

DATE RECEIVED	CONTRIBUTOR'S NAME, ADDRESS, ZIP (totaling more than \$50 this report period)	OCCUPATION, PRINCIPAL PLACE OF BUSINESS (as applicable)	TYPE (use key code)	AMOUNT	TOTAL (from same source this election)
9/22/04	CITIZENS for JUSTICE IN MAINE	Augusta	4	100	100
9/22/04	MAINE TRUCK PAC	Augusta	4	100	100
9/22/04	CUMBERLAND County TEACHERS FCU	Portland	4	35	35
9/23/04	JAMES F. MITCHELL	Augusta	3	250	250
9/24/04	MAINE HEALTHCARE ASSOC.	Gardiner	3	250	250
9/28/04	EATON PERBODY	Portland	3	100	100
9/24/04	MAINE Insurance Agent PAC	Portland	4	250	250
10/5/04	Merchants Alliance for Better GOVERNMENT	Portland	3	50	50
10/13/04	PETER + CAROL Blyberg	Blue Hill	2	100	100
10/13/04	MECK + CO.	Augusta West Park Mass.	3	200	200

1. Total cash contributions (this page only)

11085.00

Key Codes:

1 = Candidate and Candidate's Spouse

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3 = Commercial Sources (corporations, etc.)

4 = Political Action Committees

5 = Political Party Committees

6 = Other Candidates and Candidate Committees

Oct 27 04 04:13p

207-546-2799

p. 4

Edward Dugay
CANDIDATE'S FULL NAME

Page 3 of 5
(Schedule A only)

**SCHEDULE A
CASH CONTRIBUTIONS**

Itemize each cash contribution of more than \$50 from the same source during the reporting period. Total contributions from the same source may not exceed \$250 in any election. The primary and general elections are considered separate elections. Do NOT include in-kind contributions on this schedule.

DATE RECEIVED	CONTRIBUTOR'S NAME, ADDRESS, ZIP (totaling more than \$50 this report period)	OCCUPATION, PRINCIPAL PLACE OF BUSINESS (as applicable)	TYPE (use key code)	AMOUNT	TOTAL (from same source this election)
10/14/04	Ralph Laeson	Cherryfield	2	20	20
10/14/04	Chris Wornell	Augusta	2	25	25
10/14/04	Bill Paquin	Surrey	2	100	100
10/16/04	Charles Renski	Wilmington	2	200	200
10/18/04	Clean Power PAC	Gardiner	4	250	250
10/19/04	mine, Society of Eye Physicians	Portland	3	150	150
10/19/04	Alice Ruston	Milbridge	2	200	200
10/19/04	William Smith	Townsend	2	100	100
10/20/04	Bernstein Grant Nelson	Portland	3	250	250
10/22/04	Friends of mine Hospitals	Augusta	3	150	150

1. Total cash contributions (this page only)

1445

Key Codes:

1 = Candidate and Candidate's Spouse

2 = Other Individuals

3 = Commercial Sources (corporations, etc.)

4 = Political Action Committees

5 = Political Party Committees

6 = Other Candidates and Candidate Committees

Oct 27 04 04:13p

207-546-2799

p.5

Page 4 of 5
(Schedule A only)

CANDIDATE'S FULL NAME

SCHEDULE A
CASH CONTRIBUTIONS

Itemize each cash contribution of more than \$50 from the same source during the reporting period. Total contributions from the same source may not exceed \$250 in any election. The primary and general elections are considered separate elections. Do NOT include in-kind contributions on this schedule.

DATE RECEIVED	CONTRIBUTOR'S NAME, ADDRESS, ZIP (totaling more than \$50 this report period)	OCCUPATION, PRINCIPAL PLACE OF BUSINESS (as applicable)	TYPE (use key code)	AMOUNT	TOTAL (from same source this election)
10/20/04	Whitney Origins	Machias	3	250	250
10/20/04	Cynthia Anderson	Greenville	2	50	50
10/20/04	WARREN Gault SR.	Cherryfield	2	100	100
10/20/04	WALTER SHANKS SONS	Worcester	3	100	100
10/20/04	Richard Kelley	Brewster	2	250	250
10/20/04	Peter LORRA GREENE	Addison	2	50	50
10/5/04	FPAL Int. People Employees	Wash. DC	4	250	250
10/21/04	Anheuser-Busch	Tallahassee Florida	3	250	250
10/21/04	MAINE OSTEOPATHIC ASSOC.	Augusta	4	100	100
10/21/04	SEVERIN Beliveau	Augusta	2	250	250

1. Total cash contributions (this page only)

1650

Key Codes:

1 = Candidate and Candidate's Spouse

2 = Other Individuals

3 = Commercial Sources (corporations, etc.)

4 = Political Action Committees

5 = Political Party Committees

6 = Other Candidates and Candidate Committees

Oct 27 04 04:13p

207-546-2799

p. 6

Edward Dugy
CANDIDATE'S FULL NAME

Page 5 of 5
(Schedule A only)

SCHEDULE A CASH CONTRIBUTIONS

Itemize each cash contribution of more than \$50 from the same source during the reporting period. Total contributions from the same source may not exceed \$250 in any election. The primary and general elections are considered separate elections. Do NOT include in-kind contributions on this schedule.

DATE RECEIVED	CONTRIBUTOR'S NAME, ADDRESS, ZIP (totaling more than \$50 this report period)	OCCUPATION, PRINCIPAL PLACE OF BUSINESS (as applicable)	TYPE (use key code)	AMOUNT	TOTAL (from same source this election)
10/22/04	Anthony Boston	For the	2	250	250
1. Total cash contributions (this page only)				250	

Key Codes:

1 = Candidate and Candidate's Spouse

2 = Other Individuals

3 = Commercial Sources (corporations, etc.)

4 = Political Action Committees

5 = Political Party Committees

6 = Other Candidates and Candidate Committees

Oct 27 04 04:15p

207-25-2799

p. 20

Edward Dugny

CANDIDATE'S FULL NAME

SCHEDULE G
(Page 1)

10-27-04

DATE SUBMITTED

SUMMARY SECTION

NOTE: Please read the instructions for completing this Schedule carefully. Complete other applicable schedules before completing this schedule. Enter column 3 figures from last report in column 1 below. Enter column 2 figures for this reporting period as indicated for each line. Add columns 1 and 2 for each row and enter the sum in column 3.
If this is your first report, leave column 1 blank; amounts in columns 2 and 3 will be the same.

RECEIPTS

	COLUMN 1 COPY FROM COLUMN 3 LAST REPORT	COLUMN 2 TOTALS FOR THIS REPORTING PERIOD	COLUMN 3 CAMPAIGN TOTALS TO DATE (add cols. 1 & 2)
1. ACCOUNT BALANCE BROUGHT FORWARD FROM PREVIOUS CAMPAIGN			
(Line 1 applies <u>only</u> if transferring surplus funds from a <u>previous campaign</u> to this new campaign.)			
2. CONTRIBUTIONS WITHOUT LOAN			
(a) More than \$50 cash each -- All Key Codes		From Schedule A (Summary) 7030	
(b) Aggregate \$50 or less cash each		From Schedule A (Summary) 0	
(c) In-kind more than \$50 each -- All Key Codes		From Schedule A-1 (Summary) 0	
(d) Aggregate in-kind \$50 or less each		From Schedule A-1 (Summary) 0	
(e) TOTAL CONTRIBUTIONS WITHOUT LOANS [add lines 2(a) - (d)]		7030	
3. LOANS			
(a) Candidate and Candidate's Spouse		From Schedule G, line 1, col. 2 0	
(b) Other Sources		From Schedule G, line 2, col. 2 0	
(c) Financial Institutions		From Schedule G, line 3, col. 2 0	
(d) TOTAL LOANS [add lines 3(a) - (c)]		0	
4. SALE OF CAMPAIGN EQUIPMENT/PROPERTY		From Schedule F, line 2, col. 1 0	
5. OTHER RECEIPTS (Interest, etc. not included elsewhere)		0	
6. TOTAL RECEIPTS WITH LOANS [add lines 1, 2(e), 3(d), 4 & 5]		7030	

Oct 27 04 04:44p

207-2799

p. 22

Edward Dugay
CANDIDATE'S FULL NAME

10/27/04
DATE SUBMITTED

SCHEDULE G
(Page 2)

SUMMARY SECTION

EXPENDITURES

COLUMN 1	COLUMN 2	COLUMN 3
COPY FROM COLUMN 3 LAST REPORT	TOTALS FOR THIS REPORTING PERIOD	CAMPAIGN TOTALS TO DATE (add cols. 1 & 2)

7. EXPENDITURES WITHOUT LOAN REPAYMENTS

- (a) General Operations
- (b) Advertising
- (c) Printing/Postage, etc.
- (d) Salaries & Compensation
- (e) Other
- (f) In-kind more than \$50 each
- (g) Aggregate in-kind \$50 or less each
- (h) TOTAL EXPENDITURES WITHOUT LOAN REPAYMENTS
[add lines 7(a) - (g)]

	From Schedule B, line 3a	
	1465.96	
	From Schedule B, line 3b	
	300.00	
	From Schedule B, line 3c	
	2530.91	
	From Schedule B, line 3d	
	2495.00	
	From Schedule B, line 3e	
	402.34	
	From Schedule A-1 (Summary)	
	0	
	From Schedule A-1 (Summary)	
	0	
	7185.21	

8. LOAN REPAYMENTS

- (a) Candidate and Candidate's Spouse
- (b) Other Sources
- (c) Financial Institutions
- (d) TOTAL LOAN REPAYMENTS [add lines 8(a) - (c)]

	From Schedule C, line 1, col. 3	
	0	
	From Schedule C, line 2, col. 3	
	0	
	From Schedule C, line 3, col. 3	
	0	
	0	

9. TOTAL EXPENDITURES WITH LOAN REPAYMENTS
[add lines 7(h) & 8(d)]

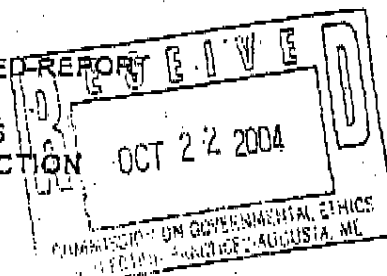
	7185.21	
--	---------	--

10. ACCOUNT BALANCE (subtract line 9 from line 6)

	153.21	
--	--------	--

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
Mail: 135 State House Station
Office: 242 State Street
Augusta, Maine 04333
Tel: (207) 287-4179 Fax: (207) 287-6775

NON-PARTICIPATING CANDIDATE ACCELERATED REPORT

AFFIDAVIT FOR HOUSE CANDIDATES
IN THE NOVEMBER 2, 2004 GENERAL ELECTION

STATE OF

MAINE

COUNTY OF

WASHINGTONEdward Dugan

, being duly sworn, says that his or
her campaign has not received, and has not spent or obligated, \$4,072 for the general
election.

Ed Dugan
(Signature of Affiant)

Sworn to before me, this 22 day of October, 2004.

Caroline A. Merritt
(Notary Public/Attorney at Law)

CAROLINE A. MERRITT



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Traditionally Financed Candidates with a Maine Clean Election Act Opponent
Treasurers

From: Andrew Seaman, Staff Auditor

Date: October 18, 2004

Re: **Reminder of October 21 Accelerated Report Due**

This is to remind you that the enclosed 12-day accelerated report is due in the office of the Ethics Commission **no later than 5:00 p.m. on Thursday, October 21**. This is required under the Election Law because you are a traditionally financed candidate who has a Maine Clean Election Act opponent. You may fax the report to (207) 287-6775, provided the Commission receives the original report within five days. When you fill out the amount of campaign receipts for the general election, *please include your campaign's cash balance as of June 8 (the date of the primary election)*.

Please also don't forget that beginning October 20 if your campaign has raised or spent the 101% amounts (\$4,072 for House candidates, and \$16,959 for Senate candidates), you are required to file a 24-Hour Report if you make a single expenditure of \$500 or more for House candidates and \$750 or more for Senate candidates. This report is also required if the campaign receives a contribution of \$1,000 or more from the candidate or candidate's spouse.

Thank you for your continued cooperation in filing these reports. Please telephone me at 287-7651 if you have any questions.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

October 6, 2004

Honorable Edward R. Dugay
P. O. Box 254
Cherryfield, ME 04622

Re: Reminder of October 12 Accelerated Report Due

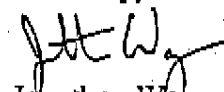
Dear Representative Dugay:

This is to remind you that the enclosed 21-day accelerated report is due in the office of the Ethics Commission no later than 5:00 p.m. on Tuesday, October 12. This is required under the Election Law because you are a traditionally financed candidate who has a Maine Clean Election Act opponent. You may fax the report to (207) 287-6775, provided the Commission receives the original report within five days. When you fill out the amount of campaign receipts for the general election, *please include your campaign's cash balance as of June 8 (the date of the primary election).*

I have also enclosed a copy of the 24-Hour Report. All traditionally financed candidates are required to file this report if they receive a contribution of \$1,000 or more from the candidate or candidate's spouse after October 21. In addition, if you have raised or spent more than the 101% amount for the general election (\$4,072 for House candidates, and \$16,959 for Senate candidates), please use this form to report any *single* expenditure of \$500 or more for House candidates, or any *single* expenditure of \$750 or more for Senate candidates, that you make after October 19. The report must be filed within 24 hours of making the expenditure (or receiving the contribution), or by noon on the next business day, whichever is later.

Thank you for your cooperation. Please telephone Commission Auditor Andrew Seaman at 287-7651 if you have any questions.

Sincerely,


Jonathan Wayne
Executive Director



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

September 16, 2004

Honorable Edward R. Dugay
P. O. Box 254
Cherryfield, ME 04622

Re: Reminder of September 21 Accelerated Report Due

Dear Representative Dugay:

This is to remind you that the attached 42-day accelerated report is due in the office of the Ethics Commission no later than 5:00 p.m. on Tuesday, September 21. This is required under the Election Law because you are a traditionally financed candidate who has a Maine Clean Election Act opponent. You may fax the report to (207) 287-6775, provided the Commission receives the original report within five days.

When you fill out the amount of campaign receipts for the general election, please include your campaign's cash balance as of June 8 (the date of the primary election). We have updated the form to include this instruction. Otherwise the enclosed form is the same as the forms we mailed to you with our August 20 letter. Please also include any debts you have from the primary election as well.

Thank you for your cooperation. Please telephone Commission Auditor Andrew Seaman at 287-7651 if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jonathan Wayne".

Jonathan Wayne
Executive Director

(w/enclosure)

Enclosure: blank accelerated report



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

COPY

August 20, 2004

Honorable Edward R. Dugay
P. O. Box 254
Cherryfield, ME 04622

Dear Representative Dugay:

Because your opponent in the November 2004 general election is a certified Maine Clean Election Act (MCEA) candidate, you are required to file additional accelerated reports using the enclosed form (four copies are enclosed). Please read the instructions on the back of the form. If you are a replacement candidate and you become certified as a MCEA candidate, at that time you may disregard this letter because you will no longer be required to file accelerated reports.

Reports Required 42, 21, and 12 Days Before the General Election

You are required to file a report on September 21, October 12, and October 21. Those reports must state your total contributions to date and your total expenditures and obligations to date. If your campaign has not raised, or spent and obligated, the 101% amounts described in the paragraph below, you may instead file the attached notarized affidavit on each deadline. All reports must be filed on time so that the Commission can determine whether your opponent is due any matching funds based on your receipts and spending. Civil penalties will be assessed for filing the September 21, October 12 and October 21 reports late.

101% Report

If you raise, or spend and obligate, more than 1% in excess of the following amounts, you must file the enclosed report within 48 hours of having received, spent, or obligated the applicable amount:

- \$16,791 for a contested Senate general election race (*i.e.*, more than \$16,959); or
- \$4,032 for a contested House general election race (*i.e.*, more than \$4,072).

In calculating the 101% amount, remember to include as receipts any funds you may have carried forward from a primary campaign into the general election campaign. If your campaign already has exceeded the 101% limit, you must submit your 101% Report within 48 hours of receiving this letter.

If you have questions regarding the reports, please telephone Andrew Seaman at 287-4179.
Thank you.

Sincerely,

Jonathan Wayne
Executive Director

STATE OF MAINE
 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
 135 State House Station, Augusta, ME 04333
 Phone: (207) 287-4179 Fax: (207) 287-6775 Web: www.maine.gov/ethics
 Electronic Filing: <http://www.maine.campaignfinance.com/public/home.asp>

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**2004 FILING SCHEDULE –
 PRIVATELY FINANCED LEGISLATIVE CANDIDATES,
 AND COUNTY AND MUNICIPAL CANDIDATES**

Election Dates:

Primary Election	June 8, 2004
General Election	November 2, 2004

Election Year Reports:

<u>Type of Report</u>	<u>Filing Deadline</u>	<u>Reporting Period</u>
6-Day Pre-Primary	June 2, 2004	Beginning of campaign ¹ - May 27, 2004
42-Day Post-Primary	July 20, 2004	May 28, 2004 - July 13, 2004
6-Day Pre-General	October 27, 2004	July 14, 2004 - October 21, 2004
42-Day Post-General	December 14, 2004	October 22, 2004 - December 7, 2004

¹If the candidate filed a January 15, 2004 semiannual report, the reporting period for the June 2, 2004 report begins on January 1, 2004.

48-Hour Reporting for the Primary Election

Candidates must disclose contributions and expenditures of \$1,000 or more made after May 27, 2004 and before 5:00 p.m. on June 6, 2004 in a special report that must be filed within 48 hours of receiving the contribution or making the expenditure, or by noon of the first business day after the transaction, whichever is later.

24-Hour Reporting for the General Election

Candidates must disclose contributions and expenditures of \$1,000 or more made after October 21, 2004 and before 5:00 p.m. on November 1, 2004 in a special report that must be filed within 48 hours of receiving the contribution or making the expenditure, or by noon of the first business day after the transaction, whichever is later.

Filing Procedures

The Ethics Commission must receive the original campaign finance report signed by both the candidate and treasurer at its office by 5:00 p.m. on the filing deadline, except in two circumstances. A properly signed report may be faxed to the Commission office at (207) 287-6775 by 5:00 p.m. on the deadline, provided that the original report is received by the Commission within five calendar days. A report that has been mailed to the Commission by certified or registered mail and that is postmarked at least 2 days before the filing deadline will not be considered late, even if it is received after the deadline.

Additional Reports for Privately Financed Legislative Candidates with a Maine Clean Election Act Opponent

101% Report

Any legislative candidate who is not participating in the Maine Clean Election Act (MCEA), who has a MCEA opponent in an election, and who receives, or spends and obligates more than 1% in excess of the initial distribution amount for the MCEA opponent, must file an accelerated report (the 101% Report). The report must be filed within 48 hours of reaching the 101% amount, and the report must state the candidate's total receipts, expenditures and obligations to date.

*** 42-Day, 21-Day, and 12-Day Accelerated Reports**

All traditionally funded candidates with a MCEA opponent are required to file three pre-election reports stating the candidate's total campaign contributions, obligations, and expenditures to date, unless the candidate files an affidavit by each deadline attesting that the candidate has not received, spent or obligated the amount that is 101% of the MCEA opponent's initial distribution amount:

<u>Type of Report</u>	<u>Filing Deadline</u>	<u>Reporting Period</u>
42-day pre-primary	April 27, 2004	Through April 25, 2004
21-day pre-primary	May 18, 2004	Through May 16, 2004
12-day pre-primary	May 27, 2004	Through May 25, 2004
42-day pre-general	September 21, 2004	Through September 19, 2004
21-day pre-general	October 12, 2004	Through October 10, 2004
12-day pre-general	October 21, 2004	Through October 19, 2004

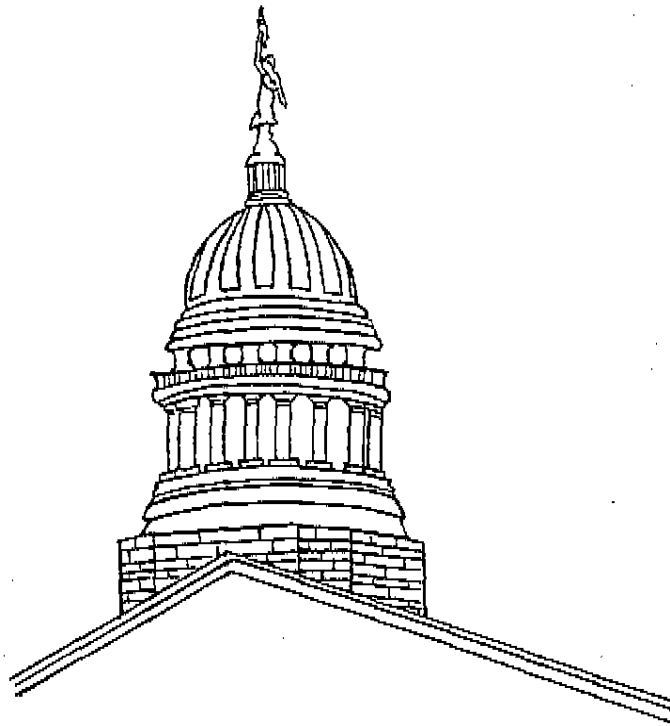
48-Hour Reporting for the Primary Election

A traditionally funded candidate with a MCEA opponent who is required to file a 101% report must also file an updated report with the Commission reporting any single expenditure of \$750 or more by candidates for State Senator or \$500 or more by candidates for State Representative made after May 25, 2004 and before 5:00 p.m. on June 6, 2004. The report must be filed within 48 hours of the expenditure, or by noon of the first business day after the expenditure, whichever is later.

24-Hour Reporting for the General Election

A traditionally funded candidate with a MCEA opponent who is required to file a 101% report must also file an updated report with the Commission reporting any single expenditure of \$750 or more by candidates for State Senator or \$500 or more by candidates for State Representative made after October 19, 2004 and before 5:00 p.m. on November 1, 2004. The report must be submitted to the Commission within 24 hours of the expenditure, or by noon of the first business day after the expenditure, whichever is later.

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A Candidate's Guide to Running for Office in Maine

2004

Dan Gwadosky
Secretary of State

Appropriation 010-29A-4211-012

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Reports Required of All Candidates**Prc- and Post-Election Reports:**

<u>Report Type</u>	<u>Due Date</u>	<u>Covering Period</u>
6-Day Pre-Primary	6/2/04	Through 5/27/04*
42-Day Post-Primary	7/20/04	5/28/04-7/13/04
6-Day Pre-General	10/27/04	7/14/04-10/21/04*
42-Day Post-General	12/14/04	10/22/04-12/7/04

- * If a previous report was filed, report only transactions that were made after the completion date of the prior report through this date. If no previous report was filed, report all financial transactions through this date.

48-Hour Reports:

Special reports must be filed to disclose contributions aggregating \$1,000 or more from the candidate or candidate's spouse or single expenditures of \$1,000 or more made:

after May 27, 2004 and before 5:00 p.m. on June 6, 2004
and
after October 21, 2004 and before 5:00 p.m. on
October 31, 2004.

The reports must be filed within 48 hours of receiving the contribution or making the expenditure, or by noon of the first business day after the transaction, whichever occurs later.

Please note that as of the printing of this guide, a bill is pending before the Legislature that would shorten this deadline to within 24 hours of the contribution or expenditure. Consult the Ethics Commission staff or Web site after April 1, 2004 to confirm whether this deadline has been amended.

Additional Reporting Requirements for Non-Participating Candidates with a Maine Clean Election Act Opponent

In addition to the reports described above, any candidate for Governor, State Senator, or State Representative who is not

participating as a Maine Clean Election Act (MCEA) candidate, who has a certified MCEA opponent in an election, and who receives, spends, or obligates more than 1% in excess of the primary or general election distribution amounts for that MCEA opponent in the same race must file, within 48 hours of such receipt, expenditure, or obligation, an accelerated report (called a 101% Report) detailing the candidate's total campaign contributions, expenditures, and obligations to date.

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Any non-participating candidate with an MCEA opponent must also file three pre-election reports stating the candidate's total campaign contributions, obligations, and expenditures to date, unless the candidate files an affidavit by the deadline attesting that the candidate has not received, spent or obligated the amount that is 101% of the MCEA candidate's distribution amount:

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<u>Report Type</u>	<u>Due Date</u>	<u>Covering Period</u>
42-day pre-primary	4/27/04	Through 4/25/04
21-day pre-primary	5/18/04	Through 5/16/04
12-day pre-primary	5/27/04	Through 5/25/04
42-day pre-general	9/21/04	Through 9/19/04
21-day pre-general	10/12/04	Through 10/10/04
12-day pre-general	10/21/04	Through 10/19/04

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Any nonparticipating candidate for Governor, State Senator or Representative with a certified MCEA opponent who is required to file a 101% Report must file an updated report with the Commission that discloses single expenditures of \$1,000 or more for gubernatorial candidates, \$750 or more for candidates for State Senator, or \$500 or more by candidates for State Representative made after the 14th day before an election. Please note that as of the printing of this guide, a bill is pending before the Legislature that would shorten this deadline to within 24 hours of the expenditure. Consult the Ethics Commission staff or Web site after May 1, 2004 to confirm whether this deadline has been amended.

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Maine Commission on Governmental Ethics and Election Practices

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Traditionally Financed Candidates with Maine Clean Election Act Opponents

In addition to reports filed by other candidates, traditionally financed candidates with a Maine Clean Election Act (MCEA) opponent must file additional reports so that the Ethics Commission can determine whether the opponent is entitled to receive matching funds.

42-Day, 21-Day, and 12-Day Accelerated Reports

All traditionally financed candidates with a MCEA opponent are required to file three accelerated reports stating the candidate's total campaign contributions, expenditures, and obligations for the general election:

42-Day Report - September 21, 2004

21-Day Report - October 12, 2004

12-Day Report - October 21, 2004



Instead of filing each accelerated report, the candidate may file a notarized affidavit by each deadline attesting that the candidate has not received, or spent and obligated the 101% Amount.

101% Report

Any traditionally financed candidate who has a MCEA opponent in the general election, and who receives, or spends and obligates, more than the 101% Amount, must file a 101% Report. The report must be filed within 48 hours of reaching the 101% Amount, and the report must state the candidate's total receipts, expenditures, and obligations to date.

101% Amounts

House Candidates - \$4,072 (101% of \$4,032)

Senate Candidates - \$16,959 (101% of \$16,79)

24-Hour Reports

A traditionally financed candidate with a MCEA opponent who is required to file a 101% Report must also file a 24-Hour Report with the Commission if the candidate makes any single expenditure of \$750 or more by candidates for State Senate or \$500 or more by candidates for State Representative after October 19, 2004 and before 5:00 p.m. on November 1, 2004. The report must be submitted to the Commission within 24 hours of the expenditure, or by noon

of the first business day after the expenditure, whichever is later.

21-A MRSA §1017

paragraph must cover all contributions and expenditures through the completion date.

C. Contributions aggregating \$1,000 or more from any one contributor or single expenditures of \$1,000 or more, made after the 12th day before any election and more than 24 hours before 5 p.m. on the day of any election must be reported within 24 hours of those contributions or expenditures.

D. Reports must be filed no later than 5 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date.

E. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$50 shown in the reports described in paragraph D must be reported as provided by this paragraph. The treasurer of a candidate with a surplus or deficit in excess of \$50 shall file reports semiannually with the commission within 15 days following the end of the 2nd and 4th quarters of the State's fiscal year, complete as of the last day of the quarter, until the surplus is disposed of or the deficit is liquidated. The first report under this paragraph is not required until the 15th day of the period beginning at least 90 days from the date of the election. The reports may either be filed in person with the commission on that date or postmarked on that date. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section.

F. Reports with respect to a candidate who seeks nomination by petition must be filed on the same dates that reports must be filed by a candidate for the same office who seeks that nomination by primary election.

3-B. Accelerated reporting schedule. Additional reports are required from nonparticipating Maine Clean Election Act candidates pursuant to this subsection.

* A. In addition to other reports required by law, any candidate for Governor, State Senate or State House of Representatives who is not certified as a Maine Clean Election Act candidate under chapter 14 and who receives, spends or obligates more than 1% in excess of the primary or general election distribution amounts for a Maine Clean Election Act candidate in the same race shall file by any means acceptable to the commission, within 48 hours of that event, a report with the commission detailing the candidate's total campaign contributions, obligations and expenditures to date.

* B. A nonparticipating candidate with a Maine Clean Election Act opponent shall file the following additional reports detailing the candidate's total campaign contributions, obligations and expenditures to date, unless that candidate signs an affidavit by the date the report is due, attesting that the candidate has not received, spent or obligated an amount sufficient to require a report under paragraph A:

(1) A report filed not later than 5 p.m. on the 42nd day before the date on which an election is held and complete as of the 44th day before that date;

(2) A report filed no later than 5 p.m. on the 21st day before the date on which an election is held and complete as of the 23rd day before that date; and

10/21/04 → (3) A report filed no later than 5 p.m. on the 12th day before the date on which an election is held and complete as of the 14th day before that date.

C. A candidate who is required to file a report under paragraph A must file with the commission an updated report that reports single expenditures in the following amounts that are made after the 14th day before an election and more than 24 hours before 5:00 p.m. on the date of that election:

(1) For a candidate for Governor, a single expenditure of \$1,000;

(2) For a candidate for the state Senate, a single expenditure of \$750; and

(3) For a candidate for the state House of Representatives, a single expenditure of \$500.

A report filed pursuant to this paragraph must be filed within 24 hours of the expenditure.

The commission shall provide forms to facilitate compliance with this subsection. The commission shall notify a candidate within 48 hours if an amount reported on any report under paragraph B exceeds 1% in excess of the primary or general election distribution amounts for a Maine Clean Election Act candidate in the same race and no report has been received under paragraph A.

4. New candidate or nominee. A candidate for nomination or a nominee chosen to fill a vacancy under chapter 5, subchapter III is subject to section 1013-A, subsection 1, except that the candidate shall register the name of a treasurer or political committee and all other information required in section 1013-A, subsection 1, paragraphs A and B within 7 days after the candidate's appointment or at least 6 days before the election, whichever is earlier. The person required to file a report under section 1013-A, subsection 1 shall file a campaign report under this section 15 days after the candidate's appointment or 6 days before the election, whichever is earlier. The report must include all contributions received and expenditures made through the completion date. The report must be complete as of 4 days before the report is due. Subsequent reports must be filed on the schedule set forth in this section. The commission shall send notification of this requirement and registration and report forms to the candidate and the candidate's treasurer immediately upon notice of the candidate's and treasurer's appointments.

5. Content. A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of \$50. The report must contain the itemized expenditures made or authorized during the report filing period, the date and purpose of each expenditure and the name of each payee and creditor. Total contributions with respect to an election of less than \$500 and total expenditures of less than \$500 need not be itemized. The report must contain a statement of any loan to a candidate by a financial institution in connection with that candidate's candidacy that is made during the

21A § 1020. Failure to file on time (REPEALED)**21A § 1020-A. Failure to file on time**

1. Registration. A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission before 5 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part;
- B. An error by the commission staff;
- C. Failure to receive notice of the filing deadline; or
- D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

3. Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

4. Basis for penalties. (REPEALED)

4-A. Basis for penalties. The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

- A. For the first violation, 1%;

- B. For the 2nd violation, 3%; and
- C. For the 3rd and subsequent violations, 5%.

Any penalty of less than \$5 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as an original of the same report is received by the commission within 5 calendar days thereafter.

* The penalty for late filing of an accelerated campaign finance report as required in section 1017, subsection 3-B may be up to but no more than 3 times the amount by which the contributions received or expenditures obligated or made by the candidate, whichever is greater, exceed the applicable Maine Clean Election Fund disbursement amount, per day of violation. The commission shall make a finding of fact establishing when the report was due prior to imposing a penalty under this subsection. A penalty for failure to file an accelerated campaign finance report must be made payable to the Maine Clean Election Fund. In assessing a penalty for failure to file an accelerated campaign finance report, the commission shall consider the existence of mitigating circumstances. For the purposes of this subsection, "mitigating circumstances" has the same meaning as in subsection 2.

5. Maximum penalties. (REPEALED)

5-A. Maximum penalties. Penalties assessed under this subchapter may not exceed:

- A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D or F; section 1017, subsection 4; and section 1019-B, subsection 3;
- B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E;
- C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E;
- D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B; or
- * E. Three times the unreported amount for reports required under section 1017, subsection 3-B, if the unreported amount is less than \$5,000 and the commission finds that the candidate in violation has established, by a preponderance of the evidence, that a bona fide effort was made to file an accurate and timely report.

21-A MRSA §1125

If the immediately preceding election cycles do not contain sufficient electoral data, the commission shall use information from the most recent applicable elections.

* **9. Matching funds.** When any campaign, finance or election report shows that the sum of a candidate's expenditures or obligations, or funds raised or borrowed, whichever is greater, alone or in conjunction with independent expenditures reported under section 1019-B, exceeds the distribution amount under subsection 8, the commission shall issue immediately to any opposing Maine Clean Election Act candidate an additional amount equivalent to the reported excess. Matching funds are limited to 2 times the amount originally distributed under subsection 8, paragraph A, C, E or F, whichever is applicable.

10. Candidate not enrolled in a party. An unenrolled candidate certified by April 15th preceding the primary election is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election candidate and a general election candidate as specified in subsections 7 and 8. For an unenrolled candidate not certified by April 15th at 5:00 p.m. the deadline for filing qualifying contributions is 5:00 p.m. on June 2nd preceding the general election. An unenrolled candidate certified after April 15th at 5:00 p.m. is eligible for revenues from the fund in the same amounts as a general election candidate, as specified in subsections 7 and 8.

11. Other procedures. The commission shall establish by rule procedures for qualification, certification, disbursement of fund revenues and return of unspent fund revenues for races involving special elections, recounts, vacancies, withdrawals or replacement candidates.

12. Reporting; unspent revenue. Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.

13. Distributions not to exceed amount in fund. The commission may not distribute revenues to certified candidates in excess of the total amount of money deposited in the fund as set forth in section 1124. Notwithstanding any other provisions of this chapter, if the commission determines that the revenues in the fund are insufficient to meet distributions under subsections 8 or 9, the commission may permit certified candidates to accept and spend contributions, reduced by any seed money contributions, aggregating no more than \$500 per donor per election for gubernatorial candidates and \$250 per donor per election for State Senate and State House candidates, up to the applicable amounts set forth in subsections 8 and 9 according to rules adopted by the commission.

14. Appeals. A candidate who has been denied certification as a Maine Clean Election Act candidate, the opponent of a candidate who has been granted certification as

Commission Rules

94-270 Chapter 3 page 11

3. Matching Fund Provision.

A. General. The Commission will authorize immediately an allocation of matching funds to certified candidates in accordance with the Act when the Commission determines that the eligibility for receipt of matching funds has been triggered [§ 1125(9)].

B. Computation and Distribution. The Commission will determine a certified candidate's allocation of matching funds, if any, in the following manner:

(1) The Commission first will add --

(a) the sum of an opposing candidate's expenditures and obligations, or funds raised and borrowed, whichever is greater, including surplus or unspent funds carried forward from a previous primary, general, or special election to the current election; and

(b) the sum of the independent expenditures made expressly advocating the defeat of the certified candidate or the election of the same opposing candidate.

(2) The Commission then will subtract --

(a) the sum of the independent expenditures made expressly advocating the defeat of the same opposing candidate; and

(b) the sum of the independent expenditures made expressly advocating the election of the certified candidate; and

(c) the sum of any matching funds already provided to the certified candidate; and

(d) the sum of any seed money raised in computing matching fund eligibility for a primary, general, or special election, as applicable; or any surplus or unspent funds carried forward from a previous primary election to the subsequent general election in computing matching fund eligibility for a general election.



- (3) If the final computed amount is greater than the applicable distribution amount for the certified candidate, then the Commission will immediately authorize the distribution of a Matching Fund allocation to the certified candidate equal to that excess.
 - (4) The Commission will make computations promptly upon the filing of campaign finance reports and independent expenditure reports.
 - (5) To prevent the abuse of the Matching Fund Provision, the Commission will not base any calculation on independent expenditures that, although containing words of express advocacy, also contain other words or phrases that have no other reasonable meaning than to contradict the express advocacy. For example, expenses related to a communication saying, "Vote for John Doe -- he's incompetent and inexperienced," will not be considered in the calculation of matching funds.
- C. Matching Fund Cap. Matching funds are limited to 2 times the amount originally distributed to a certified candidate from the Fund for that election. Certified candidates are not entitled to cumulative matching funds for multiple opponents.
- D. Other. Any distribution based on reports and accurate calculations at the time of distribution is final, notwithstanding information contained in subsequent reports.
- E. Coordination with Other State Agencies. The Commission will coordinate with the Bureau of Accounts and Control and other relevant State agencies to implement a mechanism for the distribution of Fund revenues to certified candidates that is expeditious, ensures public accountability, and safeguards the integrity of the Fund.

SECTION 7. RECORD KEEPING AND REPORTING

- 1. Record Keeping by Participating and Certified Candidates. Participating and certified candidates must comply with applicable record keeping requirements set forth in Title 21-A, chapter 13, subchapter II [§1016].
 - A. Fiduciary Responsibility for Funds. All funds provided to a certified candidate or to a candidate's authorized political committee must be segregated from, and may not be commingled with, any other

Agenda

Item #4

David F. Emery
Post Office Box 140
75 Haskell Point Road
Tenants Harbor, ME 04860

6 July, 2005

Commission on Governmental Ethics
Jonathan Wayne, Executive Director
135 State House Station
Augusta, Maine 04333

Jonathan:

As you know, I have recently announced my interest in a possible campaign for Governor of Maine. An important part of the decision-making process is to thoroughly understand and evaluate the campaign financing options available to me under Maine law. As we discussed recently during my visit to your office, I have posed a series of campaign-related questions for the Commission which will help me, and hopefully other candidates, to make informed choices.

Question 1. Official candidacy.

Do I assume correctly that no person is considered to be an 'official' candidate for Governor, notwithstanding public statements expressing interest, until he files the necessary documents to become a candidate? What act triggers a candidacy for regulatory purposes?

Question 2. Operation of a PAC as an exploratory committee.

A campaign for Governor is a large and complex enterprise that differs in many significant respects from a campaign for State Representative or State Senator. Among the more obvious differences are the much greater cost, duration, complexity and structure, as well as the nature of the personal commitment of the candidate and his family. For these reasons, it is necessary to conduct some pre-campaign activities in order to evaluate statewide support and to determine if a campaign for Governor is a realistic and viable endeavor.

As I understand the law, the operation of a PAC as an exploratory committee would not be necessary if I should decide to run as a 'traditional' candidate; in that case I would simply file and operate under the usual candidate committee. However, should I decide to run as a 'clean' candidate, an exploratory PAC would be necessary because my only other option for funding necessary exploratory activities would be to use the \$50,000 of seed money. Such use of the limited seed money resources would then seriously hinder my ability to raise the 2500 five-dollar checks necessary to qualify for public financing.

The proposed exploratory PAC would raise and expend funds for several activities, including a poll; mailings; phone and office; travel expenses; staff; printing; and other expenses. It is difficult to estimate the total exploratory expenditure, but it would probably be in the neighborhood of \$100,000.

- a) Is such a PAC for exploratory purposes allowable prior to filing as a 'clean' candidate for Governor? And, if so, under what parameters and/or restrictions must it operate?
- b) Are there contribution and/or expenditure limitations that would apply to such a committee in anticipation of a possible 'clean' candidacy for Governor?
- c) Are there contribution and/or expenditure limitations that would apply to such a committee in anticipation of a possible 'traditional' candidacy for Governor?
- d) If there are excess funds and/or assets remaining in the exploratory PAC after either 'clean' or 'traditional' candidacy papers have been filed, how may those assets be disposed of? Specifically, can any of those remaining assets be transferred to the candidate committee?
- e) If there are exploratory PAC debts remaining after either 'clean' or 'traditional' candidacy papers have been filed, is it permissible for the exploratory PAC to continue to raise money to pay those debts, and if so, under what fundraising restrictions must it operate?
- f) If there are unused materials (position papers, brochures, etc.), paid for by the exploratory PAC remaining after either 'clean' or 'traditional' candidacy papers have been filed, can those materials be used by the candidate's committee?

Question 3. Retaining a candidate's business as a campaign vendor.

I own two businesses that conduct public opinion polling and statistical analysis. The first is Scientific Marketing & Analysis, an unincorporated sole proprietorship; the second is Demographic Strategies, an unincorporated partnership of which I own a 50% share. Both of these businesses have been in operation for about 16 years.

Naturally, I have great faith in the expertise my businesses have developed over the years and want to contract with one or the other of these businesses for my campaign polling and analysis. My intention would be for the businesses to charge my campaign committee at the same rates they charge other clients for these services.

- a) What conditions or restrictions, if any, apply should I wish to retain the services of my own business, running for Governor as a 'clean' candidate?
- b) What conditions or restrictions, if any, apply should I wish to retain the services of my own business, running for Governor as a 'traditional' candidate?

Question 4. Reimbursing a candidates personal expenses.

I recall a newspaper article critical of some Legislative candidates for reimbursing themselves for meals, travel, lodging or for travel out of state. There is clearly a difference between the needs of a candidate for State Representative who can almost always eat and sleep at home, and a candidate for Governor who may of necessity be on the road for days at a time.

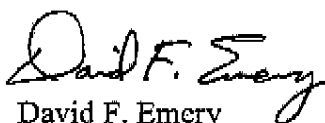
And whereas a candidate for the Legislature may have no demonstrable need to travel out of state, a candidate for Governor may be asked to participate in events at the White House, conferences regarding issues of national or regional interest, campaign schools in Washington DC, etc.

- a) Will you clarify the restrictions, if any, that apply to the reimbursement of a candidate for Governor for such personal expenses, or that apply to the direct payment of such expenses by the committee for both 'clean' and 'traditional' committees?
- b) Will you clarify the restrictions, if any, that apply to the reimbursement of a candidate for Governor or that apply to the direct payment for campaign-related out-of-state travel by the committee for both 'clean' and 'traditional' committees?

It is my understanding that the Commission on Governmental Ethics will meet on Wednesday, July 13, at 9am; and that the Commission will discuss my questions at about 10am, or following other regularly scheduled business. I will plan to attend the meeting and will be available to discuss these questions if the Commission would find that useful for its deliberations.

I very much appreciate your helpfulness and efficiency in responding to my several inquiries.

Sincerely,



David F. Emery

Agenda Item #5

APPROVED	CHAPTER
JUN 10 '05	111
BY GOVERNOR	RESOLVES

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIVE

H.P. 1181 - L.D. 1672

**Resolve, Regarding Legislative Review of Portions of
Chapter 1: Procedures; Portions of Chapter 3: Maine Clean
Election Act and Related Practices; and Campaign Reporting
Forms for Candidates, Major Substantive Rules of the
Commission on Governmental Ethics and Election Practices**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rules have been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rules; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 1: Procedures; portions of Chapter 3: Maine Clean Election Act and Related Practices; and Campaign Reporting Forms for Candidates, provisionally adopted major substantive

rules of the Commission on Governmental Ethics and Election Practices that have been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if the following changes are made.

In Chapter 1, section 7, with regard to the advance purchase of goods and services, the language must be changed to include radio and television contracts and contracts for design work among the goods and services that, if contracted or paid for prior to the primary election, must be received prior to the primary election to be considered primary election expenditures. The language in Chapter 1, section 7, with regard to the advance purchase of goods and services, must also be changed to remove the requirement that a report be filed when a preponderance of goods purchased during the primary election cycle are used during the general election cycle. The change must also provide that, upon complaint regarding the use of goods and services purchased during a primary election during a general election, the commission may request a report of such expenditures.

Emergency clause. In view of the emergency cited in the preamble, this resolve takes effect when approved.

94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 1: PROCEDURES

SUMMARY: This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

SECTION 1. DEFINITIONS

In addition to the definitions provided in Title 21-A, chapters 1, 13, and 14, the following definitions shall apply to the rules of the Commission, unless the context otherwise requires:

1. Act. "Act" means the Maine Clean Election Act, Title 21-A, chapter 14.
2. Association. "Association" means a group of two or more persons, who are not all members of the same immediate family, acting in concert.
3. Campaign Deficit. "Campaign deficit" means debts, liabilities, and unmet financial obligations from all previous campaigns as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§ 1017(9)].
4. Campaign Surplus. "Campaign surplus" means money, equipment, property and other items of value remaining after retiring previous campaign deficit as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§ 1017(9)].
5. Candidate. "Candidate" has the same meaning as in Title 21-A, chapter 1, subchapter I [§ 1(5)], and includes individuals running for office as a write-in candidate.

INFORMATIONAL NOTE: All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election, pursuant to section. 4.2.A(5)(e) of this rule. A candidate who collects funds subsequent to an election for purposes other than retiring campaign debt is required to register with the Commission. Title 21- A, chapter 13, subchapter II [§ 1013-A].

6. Certified Candidate. "Certified candidate" has the same meaning as in the Act [§ 1122(1)].

7. Commission. "Commission" means the Commission on Governmental Ethics and Election Practices established by Title 5, section 12004-G, subsection 33, and 1 M.R.S.A. section 1001 et seq.
8. Contribution. "Contribution" has the same meaning as in Title 21-A, chapter 13, subchapter II [§ 1012(2)].
9. Election. "Election" means any primary, general or special election for Governor, State Senator or State Representative. The period of a primary election begins on the day a person becomes a candidate as defined in 21-A M.R.S.A. §1(5) and ends on the date of the primary election. The period of a general election begins on the day following the previous primary election and ends on the date of the general election. The period of a special election begins on the date of proclamation of the special election and ends on the date of the special election.
10. Expenditure. "Expenditure" has the same meaning as in Title 21-A, chapter 13, subchapter II [§ 1012(3)].
11. Fund. "Fund" means the Maine Clean Election Fund established by the Act [§ 1124].
12. In-Kind Contribution. "In-kind contribution" means any gift, subscription, loan, advance or deposit of anything of value other than money made for the purpose of influencing the nomination or election of any person to political office or for the initiation, support or defeat of a ballot question.
13. Member. A "member" of a membership organization includes all persons who currently satisfy the requirements for membership in the membership organization, have affirmatively accepted the membership organization's invitation to become a member, and either:
 - A. pay membership dues at least annually, of a specific amount predetermined by the membership organization; or
 - B. have some other significant financial attachment to the membership organization, such as significant investment or ownership stake in the organization; or
 - C. have a significant organizational attachment to the membership organization that includes direct participatory rights in the governance of the organization, such as the right to vote on the organization's board, budget, or policies.

Members of a local union are considered to be members of any national or international union of which the local union is a part, of any federation

with which the local, national, or international union is affiliated, and of any other unions which are members or affiliates of the federation. Other persons who have an enduring financial or organizational attachment to the membership organization are also members, including retired members or persons who pay reduced dues or other fees regularly to the membership organization.

14. Nonparticipating Candidate. "Nonparticipating candidate" has the same meaning as in the Act [§ 1122(5)].
15. Participating Candidate. "Participating candidate" has the same meaning as in the Act [§ 1122(6)].
16. Qualifying Contribution. "Qualifying Contribution" has the same meaning as in the Act [§ 1122(7)].
17. Qualifying Period. "Qualifying period" has the same meaning as in the Act, except that for special elections, vacancies, withdrawals, deaths, disqualifications or replacements of candidates, the qualifying period shall be the period designated in section 8 of this chapter [§ 1122(8)].
18. Seed Money Contribution. "Seed money contribution" has the same meaning as in the Act [§ 1122(9)].
19. Write-In Candidate. "Write-in candidate" means a person whose name does not appear on the ballot under the office designation to which a voter may wish to elect the candidate.

SECTION 2. ORGANIZATION

1. Commission. The Commission on Governmental Ethics and Election Practices is an independent agency of the State, consisting of five (5) members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over legal affairs and confirmation by the Legislature in accordance with Title 1, section 1002, subsection 1. The Commission members will elect one member to serve as Chair. Except for the Chair, the members of the Commission have no individual authority.
2. Office.
 - A. The Commission employs such staff as may be authorized by the Legislature. A Director supervises the staff and is responsible for all day-to-day operations. In the interim between Commission meetings, the Director reports to the Chair, who acts on behalf of

the Commission on certain administrative matters. The Commission's offices are located in the Public Utilities Commission Building at 242 State Street in Augusta, where any filing or written submission may be made between the hours of 8 a.m. and 5 p.m. on any day when state government offices are open, except that filings by facsimile or electronic means, where otherwise permitted by rule, may be transmitted at any time. The office has a mailing address of 135 State House Station, Augusta, Maine 04333.

- B. All records of the Commission are maintained in these offices, where they are available for inspection or copying, except as particular records are made confidential by law. The cost of copying Commission documents is set by the Director of the Commission, subject to reasonable limitations and approval of the Commission.
- C. During any period when the position of Director is vacant, the Chair of the Commission will appoint an acting Director.

SECTION 3. MEETINGS

- 1. Regular Meetings. The Commission will meet at least four times during the course of any year in which a general election is held, and at least twice during every other year. A tentative schedule of meetings for each calendar year will be adopted at the first meeting in each year. A meeting will be held as early as possible after the appointment of (a) new commission member(s) in each even-numbered year to select a Chair.
- 2. Special Meetings. The Commission may meet at any time at the call of the Secretary of State, the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Commission, or a majority of its members. Each member of the Commission must have at least 24 hours notice of the time, place and purpose of the meeting. If written notice is not feasible, telephone notice satisfies the foregoing requirement.
- 3. Agenda. The Director will prepare a written agenda for each meeting of the Commission. The agenda will contain items of business to be considered, staff findings and recommendations, and will include the date, time and location of the meeting. When possible, the agenda will be mailed to each Commission member at least 7 days before the meeting.
- 4. Notice. In addition to the public notice required by the public meetings law, 1 M.R.S.A. Section 406, notice of Commission meetings will be given to those directly involved or affected by matters pending before the Commission, as follows:

- A. Legislative Ethics. When a properly filed request or referral is made for an advisory opinion on a question of legislative ethics, notice that the matter has been placed on the agenda for a Commission meeting will be given by mail to the Legislator whose circumstances or conduct is at issue, or to the Presiding Officer of either House referring the inquiry. When a complaint alleging a violation of the laws on legislative ethics is filed, the Legislator will be informed promptly of the nature of the allegations and the existence of any investigation by the Commission. Notice that the matter has been placed on the agenda for a Commission hearing will be given by certified mail to both the Legislator and the complainant not less than 10 days before the date set for a hearing.
- B. Campaign Reports and Finances Law; Lobbyist Disclosure Law. Notice of the Commission's consideration of any noncompliance with the requirements of the Campaign Reports and Finances Law or Lobbyist Disclosure Law will be provided to any person or organization alleged to have committed a violation and to any person who has officially requested a Commission investigation or determination.
- C. Other Matters.
 - (1) With respect to any other matter presented to the Commission, notice will be given to the person or organization whose conduct is at issue, and to any complainant, except as provided in Section 3, subsection 1, paragraph B of these rules.
 - (2) The notice will include the date, time, and location of the Commission meeting. If mail notice of a meeting is not feasible, the staff will make best efforts to give oral notice to Commission members or to those entitled to notice under this provision.
- 5. Public Meetings. All meetings, hearings or sessions of the Commission will be open to the general public unless, by an affirmative vote of at least 3 members, the Commission requires the exclusion of the public, pursuant to 1 M.R.S.A. Section 1005 or 1 M.R.S.A. Section 1013(3).
- 6. Quorum. Every decision of the Commission must be made at a meeting at which at least 3 members of the Commission are present and voting. When it is impossible or impractical for a member of the Commission to travel to Augusta to attend a meeting in person, the member may

participate in the meeting by telephone. That member will be considered present at the meeting and part of the quorum.

At least 2 members must be present in person for the conduct of a meeting or public hearing before the Commission. If fewer than 3 members are present in person for a hearing, however, objections to rulings of the presiding officer concerning the conduct of the hearing must be preserved until a meeting of the Commission at which a quorum is present in person. The presiding officer at a meeting or public hearing must be present in person.

7. Minutes.

- A. The Director will prepare minutes of each business meeting of the Commission. These minutes will be the official record of Commission meetings, and will accurately record all matters considered.
- B. The minutes will record any executive session of the Commission and its subject matter, but will not report the proceedings of the executive session. Likewise, minutes will not be taken of any public hearing held by the Commission, since hearings are separately recorded.

SECTION 4. INITIATION OF PROCEEDINGS

- 1. Legislative Ethics. The Commission is authorized to investigate and make advisory recommendations to either House of the Maine Legislature concerning legislative conflicts of interest or any breach of the legislative ethics set forth in 1 M.R.S.A. Sections 1001 - 1023. The Commission's opinion may be sought by three methods, or the Commission may act on its own motion.
 - A. Legislator's Own Conduct.
 - (1) A Legislator seeking an advisory opinion with respect to his or her own circumstances or conduct should make a written request for an opinion, setting forth the pertinent facts with respect to the legislative matter at issue and the circumstances of the Legislator giving rise to the inquiry.
 - (2) The request will be officially filed only when received at the offices of the Commission. The Director will promptly send a copy of the request to the Chair, and the matter will be

placed on the agenda for the next Commission meeting, or if necessary, at a special meeting.

- (3) An oral request by a Legislator for an opinion with respect to his or her own circumstances will not be considered an official request for an advisory opinion, and a Legislator making such a request will be so notified, by letter, and encouraged to file a written request.

B. Complaints. Any written complaint will be included in the agenda of the next Commission meeting.

- (1) Complaint by a Legislator. Copies of any sworn complaint filed by a Legislator will promptly be sent to the Legislator against whom the complaint has been lodged and to the Commission Chair, in each case identifying the Legislator making the complaint. A complaint invokes the Commission's authority only if made under oath and only if it addresses an alleged conflict of interest relating to circumstances arising during the term of the legislature then in office.
- (2) Other Complaints.
 - (a) The Director will review each complaint to determine whether the matter relates to the Commission's statutory mandate. When a complaint is filed, the Director, in consultation with Commission Counsel, will review the matter to determine whether the complaint has sufficient merit to warrant recommending the calling of a meeting. When a meeting is called, the Commission will determine in executive session whether to hear the complaint. If the nature of the complaint clearly does not fall within the scope of the Commission's jurisdiction, the Director will so notify the complainant by letter within 14 days of receiving the complaint. In such cases, the respondent need not be notified. The Commission may reverse any administrative decision.
 - (b) An oral complaint by any person alleging a conflict of interest concerning any legislator does not constitute a complaint under 1 M.R.S.A. Section 1013(2)(B), and a person registering such a complaint will be so notified, by letter.

- C. Referral by Presiding Officer. When a Legislator has requested an advisory opinion from the Presiding Officer of the House of which he/she is a member, and the Presiding Officer has referred the inquiry directly to the Commission, the Director will arrange a meeting of the Commission as soon as possible to consider the question.

2. Election Campaign Reporting.

- A. Report Review. The Commission staff will review all filings made pursuant to 21-A M.R.S.A. Sections 1001 - 1062 to ascertain any apparent violations of the filing requirements set by statute or rule. Reports and registrations will be checked for violations against a standardized checklist. Notice of any omission, error, or violation will be given by mail to the filer and a copy of the notice and any other communication made to or from the filer relating to the problem(s) will be placed in the filer's record. The notice will include a request that the filer remedy any omission or error within 15 days of the date of the notice. If the filer fails to respond within that time frame, the Commission staff may contact the filer to establish a reasonable grace period within which the filer must comply. If the filer does not rectify the problem, the matter will be placed on the agenda of the next Commission meeting, along with all documents relating to the case. Additionally, any apparent occurrences of substantial nonconformance with the requirements of the law will be placed on the agenda of the next meeting, including, but not limited to, the following:

- (1) Failure to properly sign a required report,
- (2) Failure to file a required report or registration,
- (3) Late filing of a required report or registration outside the grace period,
- (4) Failure to disclose contributions received or expenditures made of more than \$500 in the aggregate on reports due after the 12th day before an election, or
- (5) Exceeding contribution limitations. For the purposes of the limitations imposed by 21-A M.R.S.A. Section 1015(1), 21-A M.R.S.A. Section 1015(2), 21-A M.R.S.A. Section 1015(3), and 21-A M.R.S.A. Section 1056, the following guidelines shall apply:

- (a) All contributions made to a candidate through the day of the primary election for which the candidate seeks office are deemed to be made in the primary election.
 - (b) Notwithstanding division (c) below, if a candidate loses in the primary, all contributions made to that candidate for the purpose of liquidating debts and liabilities associated with the candidate's candidacy are deemed to be made in the primary election.
 - (c) All contributions made to a candidate from the day after the primary election through the date of the general election for which the candidate seeks office are deemed to be made in the general election.
 - (d) Notwithstanding division (e) below, all contributions made after the general election to a general election candidate for the purpose of reducing debts and liabilities associated with the candidate's candidacy are deemed to be made in the general election.
 - (e) All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election.
- (6) Divisions (a) through (e) above shall apply to any write-in candidate who has qualified under 21-A M.R.S.A. Section 723, or who has received contributions or made expenditures with the intent of qualifying as a candidate.
- B. The Commission will determine whether a report substantially conforms to the requirements of the law. At each meeting, the Director will submit a summary of all cases resolved administratively. The Commission may reverse any administrative decision.
- C. Late Reports and Registrations. Where required by statute, notice of failure to file a required report will be timely sent by Commission staff. When a report or registration is filed late, the Director's recommendations will be based on the following considerations:
 - (1) Lateness of report or registration,
 - (2) Reason for lateness,

- (3) Kind of report (more stringent application for pre-election reports),
 - (4) Amount of campaign funds not properly reported,
 - (5) Previous record of the filer, and
 - (6) Good faith effort of the filer to remedy the matter.
- D. Reports of noncompliance with the provisions of the campaign registration and reporting laws that may come to the attention of the Commission staff from any source other than review of the reports filed will be reported to the Commission Chair. Any person (as defined in 21-A M.R.S.A. Section 1001) may make an official request for a Commission investigation or determination by filing a written request at the Commission's office, setting forth such facts with sufficient details as are necessary to specify the alleged violation. Statements should be made upon personal knowledge. Statements which are not based upon personal knowledge must identify the source of the information which is the basis for the request, so that respondents and Commission staff may adequately respond to the request. A copy of any such written request will be promptly mailed to the Commission Chair as well as to the candidate or organization alleged to have violated the statutory requirements. An official request will be placed on the agenda of the next Commission meeting.
- E. An oral report of a violation, or a written request containing insufficient detail to specify the violation charged, does not constitute an official request for a Commission determination, and a person registering such a complaint will be so notified. The Director will list any oral report of a violation, or insufficient written report, on the agenda of the Commission's next meeting, but no action will be taken except upon the Commission's initiative. The person alleged to have committed a violation will be notified of the Commission meeting.
- F. If the Director and Counsel are in agreement that the subject matter of a request for an investigation is clearly outside the jurisdiction of the Commission, the staff may forward the request to the appropriate authority or return it to the person who made the request, provided that the staff notifies the Commission members of the action at the next Commission meeting.

- G. The signature of a person authorized to sign a report or form constitutes certification by that person of the completeness and accuracy of the information reported. The use of a password in filing an electronic report constitutes certification of the completeness and accuracy of the report.

3. Lobbyist Disclosure Procedures.

- A. Report Review. The Commission staff will monitor all filings made pursuant to 3 M.R.S.A. Section 311 et seq. for timeliness, legibility, and completeness. The staff will send the lobbyist a notice of any apparent reporting deficiency, including failure to use prescribed forms. The notice will include a request that the deficiency be corrected within 15 business days of the notice. If remedy is not made, it will be noted on the agenda of the next Commission meeting. The Commission may reject reports that are incomplete or illegible.
- B. Late Registrations and Reports. Notice will be given by mail to any lobbyist whose registration, monthly disclosure report, or annual report is delinquent. In the case of a late monthly report, the notice must be mailed within 7 business days following the filing deadline for the report. In the case of late annual reports and registrations, the notice must be mailed within 15 business days following the filing deadline. The notice must include a statement specifying the amount assessed. A penalty of \$100 will be assessed the lobbyist for every month that a monthly disclosure report is late and a penalty of \$200 will be assessed the lobbyist and employer for every month a registration or annual report is filed late. For purposes of 3 M.R.S.A. Section 319(1), the month will end on the 15th day of the month following the month in which a report was due. Any failure to submit a required report, registration, or penalty fee will be noted on the Commission agenda.
- C. Suspensions. The Commission may suspend any person from lobbying who fails to file a required report or pay an assessed fee. A notice of the suspension must be mailed to the lobbyist by U.S. Certified Mail within three days following the suspension. Reinstatement will occur on the date the required report or payment is received in the Commission office. A notice of the reinstatement must be mailed to the lobbyist by U.S. Certified Mail or given directly to the lobbyist within three days following receipt of the required report or payment.
- D. Request for Penalty Waiver. A lobbyist may request a waiver of any late penalty the lobbyist incurs. The request must be made in

writing to the Commission and must state the reason for the delinquency. Any such request must be noted on the agenda of the next Commission meeting. Only the Commission may grant penalty waivers.

- E. Request for Waiver of Nonsession Reporting Requirement. A lobbyist may request a waiver of the monthly nonsession reporting requirement set forth in 3 M.R.S.A. Section 317(4) if the lobbyist does not expect to be engaged in lobbying when the Legislature is not in session. The Director is authorized to provisionally grant such waivers pending approval by the Commission. Provisional waivers may be granted only where a request is properly filed, the statement properly completed, and where there is no apparent reason to doubt the statement is true. During the period in which the waiver is effective, reports will not be required. If lobbying is resumed during the period for which the waiver was granted, the lobbyist must file a monthly disclosure report for the month or months lobbying was conducted.
- F. Faxing Duly Executed Lobbyist Registration, Reports. Any registration or report required by 3 M.R.S.A. ch. 15 may be provisionally filed by transmission of a facsimile copy of the duly executed report to the Commission, provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

SECTION 5. FACT FINDING AND INVESTIGATIONS

1. Before Commission Meeting. With respect to any inquiry, report or request for Commission action properly filed in accordance with the preceding section, the Director may conduct such preliminary fact finding as is deemed prudent and desirable. When the Director and Counsel find a basis for a preliminary investigation, they will recommend such steps to the Chair as necessary. Pursuant to reviewing reports or finding of fact, the Director, in consultation with Counsel, will prepare a summary of findings and recommendations for inclusion on the agenda. The Chair is authorized to issue subpoenas in the name of the Commission to compel the attendance of witnesses or the production of records, documents or other evidence when the Chair and the Commission's Counsel are in agreement that the testimony or evidence sought by the subpoena is likely to be of critical importance to disposition of the matter; and to issue any subpoena in the name of the Commission on behalf of any person having a statutory right to an agency subpoena. Any oral testimony compelled by a subpoena issued by this provision will be presented initially and exclusively to the Commission.

2. By the Commission. Once any matter is reached on the agenda of a Commission meeting, the Commission will control any further investigation or proceedings. No hearings will be held except by direction of the Commission. On a case-by-case basis, the Commission may authorize its Chair, Director, or any ad hoc committee of its members, to conduct further investigative proceedings on behalf of the Commission between Commission meetings. Any authorization so conferred will be fully reflected in the minutes of the Commission meeting.

SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS

1. A loan is a contribution at the time it is made unless the loan was made by a financial institution in the State of Maine in the ordinary course of business. Loans continue to be contributions until they are repaid. Loans are subject to the candidate contribution limitations, except for loans made by the candidate, the candidate's spouse, or a financial institution in the State of Maine in the ordinary course of business.
2. Candidates and political action committees must report the occupation and employer of each individual contributor who gives, in the aggregate, more than \$50 for the reporting period. The reporting is required for private contributions raised by traditionally financed candidates and for seed money contributions to candidates participating in the Maine Clean Election Act. Candidates and political action committees must make a reasonable effort to obtain the employment information of the contributor. If a candidate or political action committee is unable to obtain the information from the contributor in response to a request, the candidate or committee shall indicate "information requested" in the occupation and employer sections of the campaign finance report.
3. Unless specifically exempted under Title 21-A M.R.S.A. Sections 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee.
4. An employer that has authorized an employee to provide services without charge to a candidate or political committee during the employee's paid work-time has made an in-kind contribution to the candidate or political

committee. No contribution has been made if the employee is providing services as a volunteer outside of the employee's paid work-time.

5. A commercial vendor that has extended credit to a candidate or political committee has not made a contribution if the credit is extended in the ordinary course of the vendor's business and the terms are substantially similar to extensions of credit made to nonpolitical debtors that are of similar risk and size of obligation.

SECTION 57. CONTENT OF CAMPAIGN FINANCE REPORTS EXPENDITURES

1. Expenditures By Consultants, Employees, and Other Agents of a Political Campaign. Expenditures made on behalf of a candidate, political committee, or political action committee by any person, agency, firm, organization, etc. employed or retained for the purpose of organizing, directing, managing or assisting the candidate, the candidate's committee, or the political action committee shall be deemed expenditures by the candidate or committee. Such expenditures must be reported by the candidate or committee as if made or incurred by the candidate or committee directly.
2. Expenditures By Political Action Committees. In addition to the requirements set forth in 21-A M.R.S.A. Section 1060(4), the reports must contain the purpose of each expenditure and the name of each payee and creditor.
3. Timing of Reporting Expenditures.
 - A. Placing an order with a vendor for a good or service; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service.
 - B. Expenditures must be reported at the earliest of the following events:
 - (1) The placement of an order for a good or service;
 - (2) The signing of a contract for a good or service;
 - (3) The delivery of a good or the performance of a service by a vendor;
 - (4) A promise or an agreement (including an implied one) that a payment will be made; or
 - (5) The making of a payment for a good or service.

C. At the time the duty to report an expenditure arises, the person submitting the report is required to determine the value of goods and services to be rendered (preferably through a written statement from the vendor) and to report that value as the amount of the expenditure. If the expenditure involves more than one candidate election, the report must include an allocation of the value to each of those candidate elections.

4. Advance Purchases of Goods and Services for the General Election.

A. Consulting services, or the design, printing or distribution of campaign literature or advertising, **including the creation and broadcast of radio and television advertising**, contracted or paid for prior to the primary election must be received prior to the primary election in order to be considered primary election expenditures.

B. If the Commission receives a complaint stating that a candidate or a committee purchased goods or services before a primary election for use in the general election, the Commission may request that the candidate or committee distinguish which of the goods and services were used in the primary election and which were used in the general election.

[RECOMMENDATION: DO NOT ADOPT FOLLOWING PARAGRAPH]

B. If a preponderance of the types of goods and services described in paragraph A purchased during the primary election cycle will be used during the general election cycle, then the candidate or any other person required to file a report with the Commission shall report these purchases as expenditures used for the general election cycle.

5. ~~In-Kind Contribution. "In-kind contribution" means any gift, subscription, loan, advance or deposit of anything of value other than money made for the purpose of influencing the nomination or election of any person to political office or for the initiation, support or defeat of a ballot question.~~

5. All payments made by a candidate or by individuals authorized by the candidate for the purpose of influencing the candidate's nomination or election must be reported as expenditures in the reporting period during which the payment is made, including payments made with the personal funds or credit card of the candidate or authorized individual. When the expenditure is reported, the candidate should indicate the person making

the payment by entering "Paid by [candidate or supporter]" in the remarks section of the expenditure schedule.

6. Multiple expenditures for bank fees and for vehicle travel may be reported in an aggregate amount, provided that the candidate or committee identifies the time period of the expenditures in the remarks section of the report.

SECTION 8. PROHIBITED COMMUNICATIONS

Commission members shall not discuss any specific case under investigation, or any case which may reasonably be expected to be the subject of investigation, as long as the matter is pending before the Commission and, where applicable, until anybody to whom the Commission renders an advisory opinion has concluded its action and any appeals therefrom have been exhausted.

SECTION 9. ACCELERATED REPORTING SCHEDULE

1. General. In addition to other reports required by law, any candidate for Governor, State Senator or State Representative who is not certified as a Maine Clean Election Act candidate under Title 21-A, section 1121 et seq., and who has a certified candidate as an opponent in an election must comply with the following reporting requirements on forms prescribed, prepared, and provided by the Commission.

INFORMATIONAL NOTE: Title 21-A, section 1017 prescribes reporting requirements for candidates.

2. 101% Report. Any candidate subject to this section, who receives, spends or obligates more than 1% in excess of the primary or general election distribution amounts for a Maine Clean Election Act candidate opponent in the same race, must file with the Commission, within 48 hours of such receipt, expenditure, or obligation, a report detailing the candidate's total campaign contributions, receipts, expenditures and obligations to date. The Commission will notify all candidates who have an opposing certified candidate of the applicable distribution amounts and of the 101% Report requirement.
3. Any traditionally funded candidate with a Maine Clean Election Act opponent shall file the following three reports detailing the candidate's total campaign contributions, obligations and expenditures to date, except that a candidate who has not received, spent, or obligated the amount sufficient to require a report under subsection 2 may file an affidavit, by

the date the report is due, attesting that the candidate has not received, spent or obligated that amount:

- A. a report filed not later than 5 p.m. on the 42nd day before the date on which an election is held that is complete as of the 44th day before the date of that election;
 - B. a report filed not later than 5 p.m. on the 21st day before the date on which an election is held that is complete as of the 23rd day before the date of that election; and
 - C. a report filed not later than 5 p.m. on the 12th day before the date on which an election is held that is complete as of the 14th day before the date of that election.
4. **24-Hour Report.** Any candidate who is required to file a 10:1% report must file an updated report with the Commission reporting single expenditures of \$1,000 or more by candidates for Governor, \$750 by candidates for State Senator, and \$500 by candidates for State Representative made after the 14th day before any election and more than 24 hours before 5 p.m. on the date of that election. The report must be submitted to the Commission within 24 hours of those expenditures.
5. **Filing by Facsimile or Electronic Means.** For purposes of this section, reports may be filed by facsimile or by other electronic means acceptable to the Commission, and such reports will be deemed filed when received by the Commission provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

SECTION 810. REPORTS OF INDEPENDENT EXPENDITURES

- 1. **General.** Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$100 per candidate in an election must file a report with the Commission according to this section.
- 2. **Definitions.** For purposes of this section, the following phrases are defined as follows:
 - A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
 - B. "Expressly advocate" means any communication that uses phrases such as "vote for the Governor," "reelect your Representative,"

"support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"

- C. "Independent expenditure" has the same meaning as in Title 21-A, section 1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.
3. Reporting Schedules. Independent expenditures must be reported to the Commission in accordance with the following provisions:
- A. Independent expenditures aggregating in excess of \$100 per candidate per election but not in excess of \$250 made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, except that expenditures made in the last 11 days before an election must be reported within 24 hours of the expenditure.
 - (1) Quarterly Reports.
 - (a) A report must be filed on January 15th and be complete as of January 5th;
 - (b) A report must be filed on April 10th and be complete as of March 31st;
 - (c) A report must be filed on July 15th and be complete as of July 5th; and
 - (d) A report must be filed on October 10th and be complete as of September 30th.

(2) Pre-Election and Post-Election Reports.

- (a) A report must be filed on the 6th 12th day before the election is held and be complete as of ~~the 12th day before the election that day.~~
- ~~(b) A report must be filed on the 42nd day after the election is held and be complete as of the 35th day after the election.~~

If the total of independent expenditures made to support or oppose a candidate exceed \$100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure. As long as the total amount spent with respect to the candidate does not exceed \$250, all reports must be filed according to the deadlines in this paragraph. If the total amount spent per candidate exceeds \$250, the reports must be filed in accordance with paragraph B.

[NOTE: FOR EXAMPLE, IF A COMMITTEE MAKES THREE \$80 EXPENDITURES IN SUPPORT OF A CANDIDATE ON SEPTEMBER 20, THE 15TH DAY BEFORE THE ELECTION AND THE 8TH DAY BEFORE THE ELECTION, THOSE THREE EXPENDITURES MUST BE REPORTED ON OCTOBER 10th, AND THE 12TH AND 7TH DAYS BEFORE THE ELECTION, RESPECTIVELY.]

- B. Independent expenditures aggregating in excess of \$250 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission within 24 hours of those expenditures. ~~Additional reports are required for subsequent increments of independent expenditures aggregating in excess of \$250 within 24 hours of these expenditures.~~ If any additional expenditures, regardless of amount, increase the total spent per candidate above the threshold of \$250, each additional expenditure must be reported within 24 hours.

[NOTE: FOR EXAMPLE, IF A COMMITTEE HAS REPORTED INDEPENDENT EXPENDITURES TOTALING \$300 IN SUPPORT OF A CANDIDATE, AND THE COMMITTEE MAKES AN ADDITIONAL \$50 INDEPENDENT EXPENDITURE IN SUPPORT OF THE CANDIDATE, THE ADDITIONAL \$50 EXPENDITURE MUST BE REPORTED WITHIN 24 HOURS.]

C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate. Reports filed after the eighth day before an election must include the following information:

1. the date on which the person making the expenditure placed the order with the vendor for the goods or services;
2. the approximate date when the vendor began providing design or any other services in connection with the expenditure;
3. the date on which the person making the expenditure first learned of the total amount of the expenditure; and
4. a statement why the expenditure could not be reported by the eighth day before the election.

4. Multi-Candidate Expenditures. When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.

A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.

[NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO 10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT, THE ALLOCATION OF THE EXPENDITURE SHOULD BE REPORTED AS: 50% FOR X, 20% FOR Y, and 30% FOR Z.]

B. If multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation.

[NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR'S RACE.]

C. If a candidate who has received matching funds because of a multi-candidate communication believes that he or she deserves additional matching funds because the communication disproportionately concerns his or her race, the Commission may grant additional matching funds in proportion to the relative treatment of the candidates in the communication.

5. Rebuttable Presumption. Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate in a race involving a Maine Clean Election Act candidate and that is disseminated during the 21 days before an election will be presumed to be an independent expenditure, unless the person making the expenditure submits a written statement to the Commission within 48 hours of the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.

A. The following types of communications may be covered by the presumption if the specific communication satisfies the requirements of Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) Printed advertisements in newspapers and other media;
- (2) Television and radio advertisements;
- (3) Printed literature;
- (4) Recorded telephone messages;
- (5) Scripted telephone messages by live callers; and
- (6) Electronic communications.

This list is not exhaustive, and other types of communications may be covered by the presumption.

B. The following types of communications and activities are not covered by the presumption, and will not be presumed to be independent expenditures under Title 21-A M.R.S.A. Section 1019-B(1)(B):

- (1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate or a political committee;

- (2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;
 - (3) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;
 - (4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and
 - (5) other communications and activities that are excluded from the legal definition of "expenditure" in the Election Law.
- C. If an expenditure is covered by the presumption and is greater, in the aggregate, than \$100 per candidate per election, the person making the expenditure must file an independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, election or defeat of a candidate. The filing of independent expenditure reports should be made in accordance with the filing schedule in subsections 3(A) and 3(B) of this rule. Independent expenditures aggregating \$100 or less per candidate per election do not require the filing of an independent expenditure report or a rebuttal statement.
- D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the 21-day period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.
- E. For the purposes of determining whether a communication is covered by the presumption, the date of dissemination is the date of the postmark, hand-delivery, or broadcast of the communication.
- F. An organization that has been supplied printed communications covered by the presumption and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed, unless the organization supplying the communications has already reported the costs of the materials to

the Commission. If the actual costs of the communications cannot be determined, the organization distributing the communication to voters must report the estimated fair market value.

- G. If a person wishes to distribute a specific communication that appears to be covered by the presumption and the person believes that the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.

SECTION 11. REPORTS OF BALLOT QUESTION CAMPAIGN ACTIVITY BY PERSONS AND ORGANIZATIONS OTHER THAN POLITICAL ACTION COMMITTEES

When a person or organization is required under 21-A M.R.S.A. Section 1056-B to file reports because of contributions or expenditures of more than \$1,500 made in support of or in opposition to a ballot question, the reports must be filed according to the following schedule:

1. Quarterly Reports. Reports must be filed on the following deadlines until the date of the election on which the question is on the ballot:
 - A. A report must be filed on January 15th and be complete as of January 5th;
 - B. A report must be filed on April 10th and be complete as of March 31st;
 - C. A report must be filed on July 15th and be complete as of July 5th; and
 - D. A report must be filed on October 10th and be complete as of September 30th.
2. Pre- and Post-Election Reports. The person or organization must file the following reports:
 - A. A report must be filed on the 6th day before the election is held and be complete as of the 12th day before the election.
 - B. A report must be filed on the 42nd day after the election is held and be complete as of the 35th day after the election.
3. 24-Hour Reports. Any contribution or expenditure in excess of \$500 made after the 12th day before the election and more than 24 hours before the

election must be reported within 24 hours of that contribution or expenditure or by noon of the first business day after the contribution or expenditure, whichever is later.

SECTION 12. CAMPAIGN CONTRIBUTIONS DURING LEGISLATIVE SESSION

1. Seed Money Contributions. Legislators and other individuals covered by Title 1 M.R.S.A. Section 1015(3)(B) may not intentionally solicit or accept a seed money contribution from a lobbyist or lobbyist associate during any period of time in which the Legislature is convened until final adjournment.
2. Acceptance of Contributions Through Political Action Committees. During a legislative session, political action committees that are closely associated with a Legislator, such as committees organized to elect a candidate or Legislator to a leadership position or committees organized to elect the candidates of a legislative caucus, may not intentionally solicit or accept a contribution from a lobbyist, lobbyist associate, or employer. During the legislative session, these political action committees may accept contributions from individuals and organizations that are not lobbyists, lobbyist associates, and their employers. Lobbyists, lobbyist associates, and employers may not contribute to political action committees closely associated with a Legislator during a legislative session, unless their contributions are segregated in a fund that is not used to influence the election or defeat of any incumbent Legislators.
3. Making a Contribution Through a Political Action Committee. During a legislative session, an organization that employs a lobbyist may not make a contribution through a political action committee with which the organization is affiliated or direct that the affiliated political action committee make a contribution to a Legislator.

Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS

[NOTE: THE COMMISSION PROPOSES MOVING THE DEFINITIONS SECTION TO CHAPTER 1 OF THE COMMISSION RULES.]

SECTION 1. DEFINITIONS

~~As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings:~~

- ~~1. Act. "Act" means the Maine Clean Election Act, Title 21-A, chapter 14.~~
- ~~2. Campaign Deficit. "Campaign deficit" means debts, liabilities, and unmet financial obligations from all previous campaigns as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§ 1017(9)].~~
- ~~3. Campaign Surplus. "Campaign surplus" means money, equipment, property and other items of value remaining after retiring previous campaign deficit as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§ 1017(9)].~~
- ~~4. Candidate. "Candidate" has the same meaning as in Title 21-A, chapter 1, subchapter I [§ 1(5)].~~

~~[INFORMATIONAL NOTE: All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election. Commission Rules, chapter 1, subdivision 3.2.A(5)(e). A candidate who collects funds subsequent to an election for purposes other than retiring campaign debt is required to register with the Commission. Title 21-A, chapter 13, subchapter II [§ 1013-A].~~

- ~~5. Certified Candidate. "Certified candidate" has the same meaning as in the Act [§ 1122(1)].~~
- ~~6. Commission. "Commission" means the Commission on Governmental Ethics and Election Practices established by Title 5, section 12004-G, subsection 33, and 1 M.R.S.A. section 1001 et seq.~~
- ~~7. Contribution. "Contribution" has the same meaning as in Title 21-A, chapter 13, subchapter II [§ 1012(2)].~~

- ~~8. Election. "Election" means any primary, general or special election for Governor, State Senator or State Representative. The period of a primary election begins on the day a person becomes a candidate as defined in 21-A M.R.S.A. §1(5) and ends on the date of the primary election. The period of a general election begins on the day following the previous primary election and ends on the date of the general election. The period of a special election begins on the date of proclamation of the special election and ends on the date of the special election.~~
- ~~9. Expenditure. "Expenditure" has the same meaning as in Title 21-A, chapter 13, subchapter II [§ 1012(3)].~~
- ~~10. Fund. "Fund" means the Maine Clean Election Fund established by the Act [§ 1124].~~
- ~~11. Nonparticipating Candidate. "Nonparticipating candidate" has the same meaning as in the Act [§ 1122(5)].~~
- ~~12. Participating Candidate. "Participating candidate" has the same meaning as in the Act [§ 1122(6)].~~
- ~~13. Qualifying Contribution. "Qualifying Contribution" has the same meaning as in the Act [§ 1122(7)].~~
- ~~14. Qualifying Period. "Qualifying period" has the same meaning as in the Act, except that for special elections, vacancies, withdrawals, deaths, disqualifications or replacements of candidates, the qualifying period shall be the period designated in section 8 of this chapter [§ 1122(8)].~~
- ~~15. Seed Money Contribution. "Seed money contribution" has the same meaning as in the Act [§ 1122(9)].~~

SECTION 21. APPLICABILITY

This chapter applies to candidates running for Governor, State Senator and State Representative who choose the alternative campaign financing option established by the Maine Clean Election Act for elections to be held beginning in the year 2000. Candidates participating in the Maine Clean Election Act must comply with these rules and all other applicable election and campaign laws and regulations. Some sections in this chapter also apply to and impose obligations on traditionally financed candidates and political committees that raise contributions and make expenditures in races involving Maine Clean Election Act candidates.

SECTION 32. PROCEDURES FOR PARTICIPATION

1. Declaration of Intent. A participating candidate must file a Declaration of Intent before collecting qualifying contributions. The Commission will provide a form for this purpose.
2. Content. The Declaration of Intent ~~must be sworn and notarized and~~ must include the following information:
 - A. an affirmation that the candidate is seeking certification as a Maine Clean Election Act candidate;
 - B. an affirmation that the candidate has not collected any qualifying contributions before signing the Declaration of Intent;
 - C. an affirmation that the candidate has not accepted any contributions, except for seed money contributions, after becoming a candidate;
 - D. an affirmation that the candidate has disposed of any campaign surplus before becoming a candidate for the new election, as required by paragraph 3.C [Campaign Surplus] of this section;
 - E. an affirmation that if the candidate has any campaign deficit, that the candidate will not accept contributions to repay that deficit as a participating candidate or certified candidate, except that the candidate may forgive any campaign loans to himself or herself made during any previous campaigns;
 - F. an affirmation that the candidate will continue to comply with applicable seed money restrictions and other requirements of the Act including, but not limited to, procedures for collecting qualifying contributions;
 - G. information identifying the candidate's treasurer, political committee, campaign finance account, social security number, and/or federal tax identification number; and
 - H. authorization by the candidate for the Commission, its agents or representatives to conduct financial audits of the candidate's campaign financial records and account(s).

3. Seed Money Restrictions.

- A. General. After becoming a candidate and before certification, a participating candidate may collect and spend only seed money contributions. The restrictions on seed money contributions apply to both cash and in-kind contributions.
- B. Total Amount.
 - (1) A participating candidate must limit the candidate's total seed money contributions to the following amounts:
 - (a) fifty thousand dollars for a gubernatorial candidate;
 - (b) one thousand five hundred dollars for a candidate for the State Senate; or
 - (c) five hundred dollars for a candidate for the State House of Representatives.
 - (2) Notwithstanding any other provision of this chapter, a candidate may carry forward to a new candidacy of that candidate campaign equipment or property, subject to the reporting requirements of Title 21-A, chapter 13 [Campaign Reports and Finances].
 - (3) The Commission periodically will review these limitations and, through rulemaking, revise these amounts to ensure effective implementation of the Act.
- C. Campaign surplus. A candidate who has carried forward campaign surplus according to Title 21-A, chapter 13, subchapter II [§ 1017(8) and §1017(9)], and who intends to become a participating candidate, must dispose of campaign surplus in accordance with the requirements of Title 21-A, chapter 13, subchapter II [§ 1017(8)]; provided, however, that a candidate may carry forward only those portions of campaign surplus that comply with the provisions of this Act regarding seed money contributions [§ 1122(9) and 1125(2)]. Any campaign surplus (excluding campaign equipment or property) carried forward under this provision will be counted toward that candidate's total seed money limit.

INFORMATIONAL NOTE: The Commission will provide educational materials to all former candidates who have a campaign surplus describing the requirement that individuals must

dispose of campaign surplus to remain eligible for participation as a Maine Clean Election Act candidate.

- D. **Return of Contributions Not in Compliance with Seed Money Restrictions.** A participating candidate who receives a contribution exceeding the seed money per donor restriction or the total amount restriction must immediately return the contribution and may not cash, deposit, or otherwise use the contribution.
- E. **Case-by-Case Exception.** A participating candidate who has accepted contributions or made expenditures that do not comply with seed money restrictions may petition the Commission to remain eligible for certification as a Maine Clean Election Act candidate. The Commission may approve the petition and restore a candidate's eligibility for certification if the candidate successfully establishes all of the following criteria:
- (1) the failure to comply was the result of an unintentional ~~administrative or accounting~~ error;
 - (2) the candidate immediately returned all contributions that did not comply with seed money restrictions or paid for goods or services contributed that did not comply with seed money restrictions;
 - (3) the candidate petitioned the Commission promptly upon becoming aware of the unintentional ~~administrative or accounting~~ error; and
 - (4) the failure to comply did not involve expenditures by the participating candidate significantly in excess of seed money total amount restrictions or otherwise constitute systematic or significant infractions of seed money restrictions.
- F. Accepting a loan from any source including a financial institution prior to certification, or spending money received in the form of a loan, is a violation of the seed money restrictions of the Act.
- FG. **Other.** A seed money contributor may also make a qualifying contribution to the same participating candidate provided that the contributor otherwise meets the requirements for making a qualifying contribution.

4. Qualifying Contributions.

- A. General. A participating candidate may collect qualifying contributions only during the relevant qualifying period and only after filing a Declaration of Intent with the Commission. Qualifying contributions must be acknowledged using forms provided by the Commission. The forms will include an affirmation by the contributor that the contributor received nothing of value in exchange for the signature and contribution.
- B. Required Number of Qualifying Contributions. A participating candidate must obtain the number of qualifying contributions during the qualifying period as required by the Act [§ 1122(7); § 1122(8); § 1125(3)].
- C. Exchanges For Qualifying Contributions Prohibited.
- (1) A participating candidate or an agent of that candidate may not give or offer to give a payment, gift, or anything of value in exchange for a qualifying contribution.
 - (2) This provision does not prohibit a participating candidate or that candidate's agent from collecting qualifying contributions at events where food or beverages are served, or where campaign promotional materials are distributed, provided that the food, beverage, and campaign materials are offered to all persons attending the event regardless of whether or not particular persons make a qualifying contribution to the participating candidate.
 - (3) This provision does not prohibit a candidate from using seed money to pay the fee for a money order provided the qualifying contributor pays the \$5 amount reflected on the money order as permitted by 21-A M.R.S.A. §1125(3).
- D. Checks Drawn on Business Accounts. Qualifying contributions must be made with the personal funds of the contributor. The Commission will not count a check drawn from an account with a business name toward the eligibility requirements, unless the name of the contributor is included in the name of the account or the candidate submits a written statement from the contributor indicating that he or she uses the business account for personal expenses.

E. Family Members. Family members, domestic partners, and live-in caregivers who reside in a single household may make qualifying contributions in the form of a single check or money order of more than \$5 provided that:

- (1) all contributors sign the receipt and acknowledgement form;
- (2) all contributors are registered to vote at the address of the household; and
- (3) all contributions are made with the personal funds of the contributors.

DE. Verification of Registered Voters.

- (1) Before submitting qualifying contributions to the Commission, a participating candidate must establish that contributors who made qualifying contributions to that candidate are registered voters.
- (2) A participating candidate must obtain written verification from the Registrar of the number of persons providing qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.
- (3) Upon request of a participating candidate, and within 10 business days after the date of the request, the Registrar must verify the names of contributors of qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.

EG. Timing of Verification. For purposes of this chapter, the Commission will deem verification of registered voters by the Registrar at any time during the qualifying period to be an accurate verification of voter registration even if the registration status of a particular voter may have changed at the time the Commission determines certification of the participating candidate.

FH. Submission of Verified Qualifying Contributions. A participating candidate may submit a completed request for certification to the Commission at any time during the qualifying period. The request will be deemed complete and the candidate will be certified only if:

- (1) if the request is accompanied by the original signed qualifying contributions forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking; or

- (2) the candidate submits to the Commission during the qualifying period or by a statement of the candidate that such signature forms have been submitted to the Registrar(s) for verification on a specific date and the verified signature forms will be received by the Commission within 10 business days thereafter, and submits to the Commission during the qualifying period photocopies of the signature forms.

SECTION 43. CERTIFICATION OF PARTICIPATING CANDIDATES

1. Request for Certification.

- A. After final submission of qualifying contributions, but not later than 5:00 p.m. on the last day of the relevant qualifying period, a participating candidate may request certification as a Maine Clean Election Act candidate ~~on forms provided by the Commission.~~
- ~~B. The request for certification must contain the candidate's affirmation that the candidate will comply with all requirements of the Act and the Commission's rules, and the candidate's acknowledgment that, as long as that person remains a candidate, he or she may not discontinue participation under the Maine Clean Election Act alternative campaign financing option without violating the Act [§ 1127] and becoming obligated to return all amounts distributed to the candidate from the Fund.~~
- GB. All participating candidates must submit qualifying contributions in alphabetical order to the Commission along with qualifying contribution forms and an alphabetical list of contributors of qualifying contributions when applying for certification as a Maine Clean Election Act candidate. Candidates who do not submit the required number of original qualifying contributions within the qualifying period will not be certified.
- DC. The Commission will review candidate applications for certification in the order in which they are received, except that it will give priority to those candidates who are in a contested primary election.

2. Reporting. Together with the request for certification, a participating candidate must report all seed money contributions received, any other contributions received, and expenditures and obligations made after becoming a candidate.

3. Unspent Seed Money. Together with the request for certification, a participating candidate must report any unspent seed money. In order to distribute funds expeditiously, the Commission will deduct from the initial distribution from the Fund to a certified candidate an amount equal to the amount of unspent seed money reported by that candidate.
4. Certification. The Commission will certify a candidate as a Maine Clean Election Act candidate upon the participating candidate's satisfaction of the requirements of the Act [§ 1125] and this chapter.
5. Appeals. Any appeals challenging a certification decision by the Commission must be in accordance with the Act [§ 1125(14)].
6. ~~Limitations on Campaign Expenses. A certified candidate must:~~
 - A. ~~limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts plus any authorized Matching Fund allocations;~~
 - B. ~~not accept any contributions unless specifically authorized in writing to do so by the Commission in accordance with the Act [§ 1125(2) and § 1125(13)];~~
 - C. ~~use revenues distributed from the Fund only for campaign-related purposes according to guidelines outlining permissible campaign-related expenditures published by the Commission; and~~
 - D. ~~not use revenues distributed from the Fund for personal use.~~

SECTION 54. FUND ADMINISTRATION

1. Coordination with State Agencies. The Commission will coordinate with the Bureau of Accounts and Control and other relevant State agencies to ensure the use of timely and accurate information regarding the status of the Fund.
2. Publication of Fund Revenue Estimates. By September 1st preceding each election year, the Commission will publish an estimate of revenue in the Fund available for distribution to certified candidates during the upcoming year's election. The Commission will update the estimate of available revenue in the Fund after April 15th of an election year and again within 30 days after the primary election in an election year.
3. Computation of Disbursement Amounts. By July 1, 1999, and at least every 4 years after that date, the Commission will determine the amount

of revenue to be distributed to certified candidates based on the type of election and office in accordance with the Act [§ 1125(8)].

4. **Distributions Not to Exceed Amount in Fund.** If the Commission determines that the revenues in the Fund are insufficient to meet distributions under this chapter, the Commission will permit certified candidates to accept and spend contributions in accordance with the Act [§ 1125(13)]. The Commission will notify participating and certified candidates in writing of any projected shortfall in the Fund and will specify timelines and procedures for compliance with this chapter in the event of any such shortfall.

SECTION 65. DISTRIBUTION OF FUNDS TO CERTIFIED CANDIDATES

1. Fund Distribution.

- A. **Establishment of Account.** Upon the certification of a participating candidate, the Commission will establish an account with the Bureau of Accounts and Control, or such other State agency as appropriate, for that certified candidate. The account will contain sufficient information to enable the distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund.
- B. **Manner of Distribution of Fund.** The Commission will authorize distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund. Such means may include, but are not limited to:
 - (1) checks payable to the certified candidate or the certified candidate's political committee; or
 - (2) electronic fund transfers to the certified candidate's or the certified candidate's political committee's campaign finance account.

2. Timing of Fund Distributions.

- A. **Distribution of Applicable Amounts.** The Commission will authorize the initial distribution of applicable amounts from the Fund to certified candidates in accordance with the time schedule specified in the Act [§ 1125(7)] and this Chapter [sec. 3.4].

INFORMATIONAL NOTE: An initial distribution from the Fund will not be made to a candidate until the Commission has certified that candidate in accordance with the provisions of the Act and this chapter. The initial distribution may be delayed if a candidate submits a list of qualifying contributors to the Registrar for verification during the last 10 business days of the qualifying period.

B. Matching Fund Allocations. At any time after certification, revenues from the Fund may be distributed to certified candidates in accordance with subsection 3, below.

C. Advances.

- (1) To facilitate administration of the Matching Fund Provision of this chapter, and to encourage participation in the Act, the Commission may authorize the advance distribution of revenues from the Fund to certified candidates. In determining whether to authorize such advances and the amounts of any such advances, the Commission will consider the amount of revenue in the Fund, the number of certified candidates, the number of nonparticipating candidates, and information contained in campaign finance and independent expenditure reports.
- (2) A certified candidate may only draw upon, spend or otherwise use, such advance Fund distributions after receiving written notification from the Commission authorizing a Matching Fund allocation in a specified amount. Written notification by the Commission may be by letter, facsimile or electronic means.

3. Matching Fund Provision.

A. General. The Commission will authorize immediately an allocation of matching funds to certified candidates in accordance with the Act when the Commission determines that the eligibility for receipt of matching funds has been triggered [§ 1125(9)].

B. Computation and Distribution. The Commission will determine a certified candidate's allocation of matching funds, if any, in the following manner:

- (1) The Commission first will add --
 - (a) the sum of an opposing candidate's expenditures and obligations, or funds raised and borrowed, whichever

is greater, including surplus or unspent funds carried forward from a previous primary, general, or special election to the current election; and

- (b) the sum of the independent expenditures made expressly advocating the defeat of the certified candidate or the election of the same opposing candidate.
- (2) The Commission then will subtract --
- (a) the sum of the independent expenditures made expressly advocating the defeat of the same opposing candidate; and
 - (b) the sum of the independent expenditures made expressly advocating the election of the certified candidate; and
 - (c) the sum of any matching funds already provided to the certified candidate; and
 - (d) the sum of any seed money raised in computing matching fund eligibility for a primary, general, or special election, as applicable; or any surplus or unspent funds carried forward from a previous primary election to the subsequent general election in computing matching fund eligibility for a general election.
- (3) If the final computed amount is greater than the applicable distribution amount for the certified candidate, then the Commission will immediately authorize the distribution of a Matching Fund allocation to the certified candidate equal to that excess.
- (4) The Commission will make computations promptly upon the filing of campaign finance reports and independent expenditure reports.
- (5) To prevent the abuse of the Matching Fund Provision, the Commission will not base any calculation on independent expenditures that, although containing words of express advocacy, also contain other words or phrases that have no other reasonable meaning than to contradict the express advocacy. For example, expenses related to a

communication saying, "Vote for John Doe -- he's incompetent and inexperienced," will not be considered a communication in support of John Doe in the calculation of matching funds.

- C. Matching Fund Cap. Matching funds are limited to 2 times the amount originally distributed to a certified candidate from the Fund for that election. Certified candidates are not entitled to cumulative matching funds for multiple opponents.
- D. Other. Any distribution based on reports and accurate calculations at the time of distribution is final, notwithstanding information contained in subsequent reports.
- E. Coordination with Other State Agencies. The Commission will coordinate with the Bureau of Accounts and Control and other relevant State agencies to implement a mechanism for the distribution of Fund revenues to certified candidates that is expeditious, ensures public accountability, and safeguards the integrity of the Fund.
- F. Disbursements With No Campaign Value. If a traditionally financed candidate has received monetary contributions which are disbursed in ways that do not in any way influence the nomination or election of the candidate, those receipts will not be considered by the Commission in calculating matching funds for his or her opponent. Such disbursements may include repaying a loan received by the candidate, refunding a contribution to a contributor, or transferring funds to a party or political committee for purposes that do not relate to the candidate's race.

4. Advance Purchases of Goods and Services for the General Election.

- A. If a preponderance of consulting services, or the design, printing, or distribution of campaign literature and advertising, including radio and television advertising, purchased prior to the primary election by an opponent of a certified Maine Clean Election Act candidate are used for the general election, then the portion to be used for the general election must be counted as a general election receipt in calculating the amount of matching funds for the certified Maine Clean Election Act candidate.
- B. If a certified candidate in a general election believes that an opponent, or person or committee making an independent expenditure, has failed to disclose an advance purchase for the general election, the certified candidate shall submit a written

request for an investigation to the Commission no later than August 30 of the election year, or within 30 days of the opponent's filing of the 42-day post-primary report, whichever is later. The request must identify the pre-primary election expenditure that is believed to be for the general election and must state a specific basis for believing that the goods and services purchased were not used for the primary election.

- C. The Commission will request a response from the opposing candidate or other respondent, and will make a determination whether the expenditure should be counted toward the certified candidate's eligibility for matching funds.

SECTION 6. LIMITATIONS ON CAMPAIGN EXPENSES.

A certified candidate must:

1. limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts plus any authorized Matching Fund allocations;
2. not accept any contributions unless specifically authorized in writing to do so by the Commission in accordance with the Act [§ 1125(2) and § 1125(13)];
3. use revenues distributed from the Fund only for campaign-related purposes as outlined in guidelines published by the Commission, and not for personal or any other use;
4. not use revenues distributed from the Fund to purchase goods to sell for profit;
5. not spend more than the following amounts of Fund revenues on post-election parties, thank you notes, or advertising to thank supporters or voters:
 - A. \$250 for a candidate for the State House of Representatives;
 - B. \$750 for a candidate for the State Senate; and
 - C. \$2,500 by a gubernatorial candidate.

The candidate may also use his or her personal funds for these purposes; and

6. not use revenues distributed from the Fund for the payment of fines, forfeitures, or civil penalties, or for the defense of any enforcement action of the Commission.

SECTION 7. RECORD KEEPING AND REPORTING

1. Record Keeping by Participating and Certified Candidates. Participating and certified candidates must comply with applicable record keeping requirements set forth in Title 21-A, chapter 13, subchapter II [§1016].
 - A. Fiduciary Responsibility for Funds. All funds provided to a certified candidate or to a candidate's authorized political committee must be segregated from, and may not be commingled with, any other funds. Matching fund advance revenues for which no spending authorization has been issued must be deposited in a federally insured financial institution until the candidate receives authorization to spend those funds.
 - B. Meal Expenses. A candidate or treasurer must obtain and keep a record for each meal expenditure of more than \$50. The record must include itemized bills for the meals, the names of all participants in the meals, the relationship of each participant to the campaign, and the specific, campaign-related purpose of each meal.
 - C. Vehicle Travel Expenses. A candidate or treasurer must obtain and keep a record of vehicle travel expenses for which reimbursements are made from campaign funds. Reimbursement may be based using either the standard mileage rate or actual expenses. The candidate must use one method exclusively during an election campaign.
 - (1) Standard Mileage Rate. The standard mileage rate is a set rate per mile that a candidate may use to compute reimbursable vehicle travel expenses. Reimbursement should be calculated using the standard mileage rate currently prescribed for employees of the State of Maine. For each trip for which reimbursement is made, a record should be maintained showing the dates of travel, the number of miles traveled, the origination, destination and purpose of the travel, and the total amount claimed for reimbursement.

- (2) **Actual Expenses.** Actual expenses include the pro rata, campaign-related share of vehicle depreciation or lease payments, maintenance and repairs, gasoline (including gasoline taxes), oil, insurance, and vehicle registration fees, etc. For reimbursement using this method, the candidate must maintain detailed records reflecting use of the vehicle for campaign-related purposes. The records must include the dates the vehicle was used for campaign-related purposes, the total mileage the vehicle was used for campaign-related purposes, the total mileage the vehicle was used for all purposes during the period for which reimbursement is made, and the percentage of total vehicle usage that the vehicle was used for campaign-related purposes.

2. **Reporting by Participating and Certified Candidates.**

- A. **General.** Participating and certified candidates must comply with applicable reporting requirements set forth in Title 21-A, chapter 13, subchapter II [§ 1017].
- B. **Return of Matching Fund Advances and Unspent Fund Revenues.** Matching Fund advance revenues that have not been authorized for spending and unspent Fund revenues shall be returned to the Fund as follows:
 - (1) **Unauthorized Matching Funds.** Candidates must return all Matching Fund advance revenues for which no spending authorization was issued prior to an election to the Commission by check or money order payable to the Fund within 2 weeks following the date of the election.
 - (2) **Unspent Fund Revenues for Unsuccessful Primary Election Candidates.** Upon the filing of the 42-day post-primary election report for a primary election in which a certified candidate was defeated, that candidate must return all unspent Fund revenues to the Commission by check or money order payable to the Fund.
 - (3) **Unspent Fund Revenues for All General and Special Election Candidates.** Upon the filing of the 42-day post-election report for a general or special election, all candidates must return all unspent Fund revenues to the Commission by check or money order payable to the Fund.

- C. Liquidation of Property and Equipment. Property and equipment that is not exclusive to use in a campaign (e.g., computers and associated equipment, etc.) that has been purchased with Maine Clean Election Act funds loses its campaign-related purpose following the election. Such property and equipment must be liquidated at its fair market value and the proceeds thereof reimbursed to the Maine Clean Election Fund as unspent fund revenues in accordance with the schedule in paragraph B above.
- (1) The liquidation of campaign property and equipment may be done by sale to another person or purchase by the candidate.
 - (2) Liquidation must be at the fair market value of the property or equipment at the time of disposition. Fair market value is determined by what is fair, economic, just, equitable, and reasonable under normal market conditions based upon the value of items of similar description, age, and condition as determined by acceptable evidence of value.

SECTION 8. RECOUNTS, VACANCIES, WRITE-IN CANDIDATES, SPECIAL ELECTIONS

1. Recounts. After a primary election, if there is a recount governed by Title 21- A, chapter 9, subchapter III, article III [§ 737-A], and either the leading candidate or the 2nd-place candidate is a certified candidate, the following provisions will apply:
 - A. If the margin between the leading candidate and the 2nd-place candidate is less than 1% of the total number of votes cast in that race and a recount is presumed necessary, the certified candidate immediately must halt the expenditure of revenues disbursed to the candidate from the Fund upon receiving notice of the recount until the recount is complete.
 - B. If the recount results in a changed winner, the certified candidate who originally received the disbursement must return any unspent distributions from the Fund to the Commission, payable to the Fund. If the new winner is a certified candidate, the Commission will distribute the applicable disbursement amount to the candidate.
 - C. If the margin between the leading candidate and 2nd-place candidate is 1% or greater of the total number of votes cast in that race and the 2nd-place candidate requests a recount, the leading

candidate, if a certified candidate, is not required to freeze expenditures of the disbursement.

- D. If the recount results in a changed winner, the certified candidate must return any unspent distributions from the Fund to the Commission, payable to the Fund. If the new winner is a certified candidate, the Commission will distribute the applicable disbursement amount to the candidate.

2. Death, Withdrawal, or Disqualification of a Candidate During Campaign.

- A. Death, Withdrawal, or Disqualification Before Primary Election. If a candidate dies, withdraws, or is disqualified before the primary election, the Commission will establish a qualifying period during which any replacement candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.
- B. Death, Withdrawal, or Disqualification After the Primary Election and before 5:00 p.m. on the 2nd Monday in July Preceding the General Election. If a candidate dies, withdraws, or is disqualified before 5:00 p.m. on the 2nd Monday in July preceding the general election, any replacement candidate will have a qualifying period from the time of the candidate's nomination until of 30 days after ~~from~~ the 4th Monday in July as a participating candidate to collect qualifying contributions and request certification.
- C. Death, Withdrawal, or Disqualification after 5:00 p.m. on the 2nd Monday in July Preceding the General Election. If a candidate dies, withdraws, or is disqualified after 5:00 p.m. on the 2nd Monday in July preceding the general election, the Commission will establish a qualifying period during which any replacement candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.
- D. Replacement Candidates Who Are Participating Candidates. Any replacement candidate choosing to become a participating candidate must otherwise comply with the requirements of this chapter and the Act including, but not limited to, seed money limits and qualifying contribution requirements. The Commission will notify any replacement candidates of the opportunity to participate in the Act and the procedures for compliance with this chapter during a special election.

3. Write-In Candidates.

- A. Write-in candidates are subject to the registration requirements of Title 21-A M.R.S.A. Section 1013-A and the campaign finance reporting requirements of Section 1017, as soon as they qualify as a nominee pursuant to 21-A M.R.S.A. Section 723, file a declaration of write-on candidacy with the Secretary of State pursuant to 21-A M.R.S.A. Section 722-A, or receive contributions or make expenditures with the intent of qualifying as a candidate in the primary or general election, whichever first occurs.
- B. Write-in candidates may not participate in the Maine Clean Election Act, except as provided in paragraph C.
- C. A write-in candidate in a primary election who becomes a party's nominee may participate in the Maine Clean Election Act for the general election. The Commission will establish a qualifying period during which the candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.
- D. A candidate who is participating in the Maine Clean Election Act and who has no opponent listed on the ballot will be presumed to be in an uncontested election even if there are one or more individuals running as write-in candidates. The participating candidate may rebut this presumption by presenting evidence to the Commission that the write-in opponent(s) received or spent substantial campaign funds. Based upon the evidence presented, the Commission may make a determination that it is a "contested election" and make a distribution of public funds to the participating candidate on that basis.

34. Special Election When One or More Candidates Desire to Become Certified Candidates. If a vacancy occurs in the office of Governor, Senator, or Representative because an incumbent dies, resigns, becomes disqualified, or changes residence to another electoral division, and a special election will be held to fill the vacant office, the following provisions apply:

- A. The Commission, in consultation with the Secretary of State, will establish a qualifying period during which any candidate in a special election may decide to become a participating candidate, collect qualifying contributions, and apply to become a certified candidate; and

- B. Any candidate in a special election must otherwise comply with the requirements of this chapter and the Act including, but not limited to, seed money limits and qualifying contribution requirements. The Commission will notify any candidates of the opportunity to participate in the Act and the procedures for compliance with this chapter during a special election.

45. Return of Unspent Fund Revenues. Any time a certified candidate withdraws, is disqualified, or dies before an election, the candidate or the candidate's agent must return to the Commission all unspent amounts distributed to the candidate by check or money order payable to the fund, within 2 weeks of the termination of the candidacy.

STATUTORY AUTHORITY:

1 M.R.S.A. § 1003(1); 21-A M.R.S.A. § 1126.

EFFECTIVE DATE:

November 1, 1998

NON-SUBSTANTIVE CHANGES:

December 3, 1998 - minor spelling and formatting.

2002 MAJOR SUBSTANTIVE RULE-MAKING

AMENDMENTS PROVISIONALLY ADOPTED:

February 13, 2002

LEGISLATIVE REVIEW OF PROVISIONAL MAJOR SUBSTANTIVE RULE:

April 8, 2002

COMMISSION ADOPTION OF FINAL RULE:

May 1, 2002

EFFECTIVE DATE:

July 31, 2002

2005 MAJOR SUBSTANTIVE RULE-MAKING

DATE OF PROVISIONAL ADOPTION OF AMENDMENTS:

April 8, 2005

DATE OF FINAL ADOPTION OF AMENDMENTS:

July 13, 2005

BASIS STATEMENT:

These amendments to Chapters 1 and 3:

- clarify those goods and services which are considered in-kind contributions to candidates and political committees;
- offer guidance on when to report expenditures, including goods and services purchased before the primary election that will be used for the general election;
- amend the reporting schedule for small independent expenditures, and requires additional information for independent expenditures reported in the last seven days before an election;
- instruct independent spenders how to allocate the costs of communications which relate to multiple candidates;
- offer guidance on the presumption that communications naming candidates in the last 21 days before the election are independent expenditures;
- clarify the prohibition on accepting contributions from lobbyists during the legislative session;
- modify the requirements for seed money and qualifying contributions;
- place further limitations on expenditures of Maine Clean Election Act funds; and
- establish policies regarding write-in candidates.

Agenda Item #6

- A. Legislative Ethics. When a properly filed request or referral is made for an advisory opinion on a question of legislative ethics, notice that the matter has been placed on the agenda for a Commission meeting will be given by mail to the Legislator whose circumstances or conduct is at issue, or to the Presiding Officer of either House referring the inquiry. When a complaint alleging a violation of the laws on legislative ethics is filed, the Legislator will be informed promptly of the nature of the allegations and the existence of any investigation by the Commission. Notice that the matter has been placed on the agenda for a Commission hearing will be given by certified mail to both the Legislator and the complainant not less than 10 days before the date set for a hearing.
- B. Campaign Reports and Finances Law; Lobbyist Disclosure Law. Notice of the Commission's consideration of any noncompliance with the requirements of the Campaign Reports and Finances Law or Lobbyist Disclosure Law will be provided to any person or organization alleged to have committed a violation and to any person who has officially requested a Commission investigation or determination.
- C. Other Matters.
 - (1) With respect to any other matter presented to the Commission, notice will be given to the person or organization whose conduct is at issue, and to any complainant, except as provided in Section 3, subsection 1, paragraph B of these rules.
 - (2) The notice will include the date, time, and location of the Commission meeting. If mail notice of a meeting is not feasible, the staff will make best efforts to give oral notice to Commission members or to those entitled to notice under this provision.
- 5. Public Meetings. All meetings, hearings or sessions of the Commission will be open to the general public unless, by an affirmative vote of at least 3 members, the Commission requires the exclusion of the public, pursuant to 1 M.R.S.A. Section 1005 or 1 M.R.S.A. Section 1013(3).
- 6. Quorum. Every decision of the Commission must be made at a meeting at which at least 3 members of the Commission are present and voting. When it is impossible or impractical for a member of the Commission to travel to Augusta to attend a meeting in person, the member may

participate in the meeting by telephone. That member will be considered present at the meeting and part of the quorum.

At least 2 members must be present in person for the conduct of a meeting or public hearing before the Commission. If fewer than 3 members are present in person for a hearing, however, objections to rulings of the presiding officer concerning the conduct of the hearing must be preserved until a meeting of the Commission at which a quorum is present in person. The presiding officer at a meeting or public hearing must be present in person.

7. Minutes.

- A. The Director will prepare minutes of each business meeting of the Commission. These minutes will be the official record of Commission meetings, and will accurately record all matters considered.
- B. The minutes will record any executive session of the Commission and its subject matter, but will not report the proceedings of the executive session. Likewise, minutes will not be taken of any public hearing held by the Commission, since hearings are separately recorded.

SECTION 4. INITIATION OF PROCEEDINGS

- 1. Legislative Ethics. The Commission is authorized to investigate and make advisory recommendations to either House of the Maine Legislature concerning legislative conflicts of interest or any breach of the legislative ethics set forth in 1 M.R.S.A. Sections 1001 - 1023. The Commission's opinion may be sought by three methods, or the Commission may act on its own motion.
 - A. Legislator's Own Conduct.
 - (1) A Legislator seeking an advisory opinion with respect to his or her own circumstances or conduct should make a written request for an opinion, setting forth the pertinent facts with respect to the legislative matter at issue and the circumstances of the Legislator giving rise to the inquiry.
 - (2) The request will be officially filed only when received at the offices of the Commission. The Director will promptly send a copy of the request to the Chair, and the matter will be

placed on the agenda for the next Commission meeting, or if necessary, at a special meeting.

- (3) An oral request by a Legislator for an opinion with respect to his or her own circumstances will not be considered an official request for an advisory opinion, and a Legislator making such a request will be so notified, by letter, and encouraged to file a written request.

B. Complaints. Any written complaint will be included in the agenda of the next Commission meeting.

- (1) Complaint by a Legislator. Copies of any sworn complaint filed by a Legislator will promptly be sent to the Legislator against whom the complaint has been lodged and to the Commission Chair, in each case identifying the Legislator making the complaint. A complaint invokes the Commission's authority only if made under oath and only if it addresses an alleged conflict of interest relating to circumstances arising during the term of the legislature then in office.
- (2) Other Complaints.
 - (a) The Director will review each complaint to determine whether the matter relates to the Commission's statutory mandate. When a complaint is filed, the Director, in consultation with Commission Counsel, will review the matter to determine whether the complaint has sufficient merit to warrant recommending the calling of a meeting. When a meeting is called, the Commission will determine in executive session whether to hear the complaint. If the nature of the complaint clearly does not fall within the scope of the Commission's jurisdiction, the Director will so notify the complainant by letter within 14 days of receiving the complaint. In such cases, the respondent need not be notified. The Commission may reverse any administrative decision.
 - (b) An oral complaint by any person alleging a conflict of interest concerning any legislator does not constitute a complaint under 1 M.R.S.A. Section 1013(2)(B), and a person registering such a complaint will be so notified, by letter.

- C. Referral by Presiding Officer. When a Legislator has requested an advisory opinion from the Presiding Officer of the House of which he/she is a member, and the Presiding Officer has referred the inquiry directly to the Commission, the Director will arrange a meeting of the Commission as soon as possible to consider the question.

2. Election Campaign Reporting.

- A. Report Review. The Commission staff will review all filings made pursuant to 21-A M.R.S.A. Sections 1001 - 1062 to ascertain any apparent violations of the filing requirements set by statute or rule. Reports and registrations will be checked for violations against a standardized checklist. Notice of any omission, error, or violation will be given by mail to the filer and a copy of the notice and any other communication made to or from the filer relating to the problem(s) will be placed in the filer's record. The notice will include a request that the filer remedy any omission or error within 15 days of the date of the notice. If the filer fails to respond within that time frame, the Commission staff may contact the filer to establish a reasonable grace period within which the filer must comply. If the filer does not rectify the problem, the matter will be placed on the agenda of the next Commission meeting, along with all documents relating to the case. Additionally, any apparent occurrences of substantial nonconformance with the requirements of the law will be placed on the agenda of the next meeting, including, but not limited to, the following:

- (1) Failure to properly sign a required report,
- (2) Failure to file a required report or registration,
- (3) Late filing of a required report or registration outside the grace period,
- (4) Failure to disclose contributions received or expenditures made of more than \$500 in the aggregate on reports due after the 12th day before an election, or
- (5) Exceeding contribution limitations. For the purposes of the limitations imposed by 21-A M.R.S.A. Section 1015(1), 21-A M.R.S.A. Section 1015(2), 21-A M.R.S.A. Section 1015(3), and 21-A M.R.S.A. Section 1056, the following guidelines shall apply:

- (a) All contributions made to a candidate through the day of the primary election for which the candidate seeks office are deemed to be made in the primary election.
 - (b) Notwithstanding division (c) below, if a candidate loses in the primary, all contributions made to that candidate for the purpose of liquidating debts and liabilities associated with the candidate's candidacy are deemed to be made in the primary election.
 - (c) All contributions made to a candidate from the day after the primary election through the date of the general election for which the candidate seeks office are deemed to be made in the general election.
 - (d) Notwithstanding division (e) below, all contributions made after the general election to a general election candidate for the purpose of reducing debts and liabilities associated with the candidate's candidacy are deemed to be made in the general election.
 - (e) All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election.
- (6) Divisions (a) through (e) above shall apply to any write-in candidate who has qualified under 21-A M.R.S.A. Section 723, or who has received contributions or made expenditures with the intent of qualifying as a candidate.
- B. The Commission will determine whether a report substantially conforms to the requirements of the law. At each meeting, the Director will submit a summary of all cases resolved administratively. The Commission may reverse any administrative decision.
- C. Late Reports and Registrations. Where required by statute, notice of failure to file a required report will be timely sent by Commission staff. When a report or registration is filed late, the Director's recommendations will be based on the following considerations:
 - (1) Lateness of report or registration,
 - (2) Reason for lateness,

- (3) Kind of report (more stringent application for pre-election reports),
 - (4) Amount of campaign funds not properly reported,
 - (5) Previous record of the filer, and
 - (6) Good faith effort of the filer to remedy the matter.
- D. Reports of noncompliance with the provisions of the campaign registration and reporting laws that may come to the attention of the Commission staff from any source other than review of the reports filed will be reported to the Commission Chair. Any person (as defined in 21-A M.R.S.A. Section 1001) may make an official request for a Commission investigation or determination by filing a written request at the Commission's office, setting forth such facts with sufficient details as are necessary to specify the alleged violation. Statements should be made upon personal knowledge. Statements which are not based upon personal knowledge must identify the source of the information which is the basis for the request, so that respondents and Commission staff may adequately respond to the request. A copy of any such written request will be promptly mailed to the Commission Chair as well as to the candidate or organization alleged to have violated the statutory requirements. An official request will be placed on the agenda of the next Commission meeting.
- E. An oral report of a violation, or a written request containing insufficient detail to specify the violation charged, does not constitute an official request for a Commission determination, and a person registering such a complaint will be so notified. The Director will list any oral report of a violation, or insufficient written report, on the agenda of the Commission's next meeting, but no action will be taken except upon the Commission's initiative. The person alleged to have committed a violation will be notified of the Commission meeting.
- F. If the Director and Counsel are in agreement that the subject matter of a request for an investigation is clearly outside the jurisdiction of the Commission, the staff may forward the request to the appropriate authority or return it to the person who made the request, provided that the staff notifies the Commission members of the action at the next Commission meeting.

- G. The signature of a person authorized to sign a report or form constitutes certification by that person of the completeness and accuracy of the information reported. The use of a password in filing an electronic report constitutes certification of the completeness and accuracy of the report.

3. Lobbyist Disclosure Procedures.

- A. Report Review. The Commission staff will monitor all filings made pursuant to 3 M.R.S.A. Section 311 et seq. for timeliness, legibility, and completeness. The staff will send the lobbyist a notice of any apparent reporting deficiency, including failure to use prescribed forms. The notice will include a request that the deficiency be corrected within 15 business days of the notice. If remedy is not made, it will be noted on the agenda of the next Commission meeting. The Commission may reject reports that are incomplete or illegible.
- B. Late Registrations and Reports. Notice will be given by mail to any lobbyist whose registration, monthly disclosure report, or annual report is delinquent. In the case of a late monthly report, the notice must be mailed within 7 business days following the filing deadline for the report. In the case of late annual reports and registrations, the notice must be mailed within 15 business days following the filing deadline. The notice must include a statement specifying the amount assessed. A penalty of \$100 will be assessed the lobbyist for every month that a monthly disclosure report is late and a penalty of \$200 will be assessed the lobbyist and employer for every month a registration or annual report is filed late. For purposes of 3 M.R.S.A. Section 319(1), the month will end on the 15th day of the month following the month in which a report was due. Any failure to submit a required report, registration, or penalty fee will be noted on the Commission agenda.
- C. Suspensions. The Commission may suspend any person from lobbying who fails to file a required report or pay an assessed fee. A notice of the suspension must be mailed to the lobbyist by U.S. Certified Mail within three days following the suspension. Reinstatement will occur on the date the required report or payment is received in the Commission office. A notice of the reinstatement must be mailed to the lobbyist by U.S. Certified Mail or given directly to the lobbyist within three days following receipt of the required report or payment.
- D. Request for Penalty Waiver. A lobbyist may request a waiver of any late penalty the lobbyist incurs. The request must be made in

writing to the Commission and must state the reason for the delinquency. Any such request must be noted on the agenda of the next Commission meeting. Only the Commission may grant penalty waivers.

- E. Request for Waiver of Nonsession Reporting Requirement. A lobbyist may request a waiver of the monthly nonsession reporting requirement set forth in 3 M.R.S.A. Section 317(4) if the lobbyist does not expect to be engaged in lobbying when the Legislature is not in session. The Director is authorized to provisionally grant such waivers pending approval by the Commission. Provisional waivers may be granted only where a request is properly filed, the statement properly completed, and where there is no apparent reason to doubt the statement is true. During the period in which the waiver is effective, reports will not be required. If lobbying is resumed during the period for which the waiver was granted, the lobbyist must file a monthly disclosure report for the month or months lobbying was conducted.
- F. Faxing Duly Executed Lobbyist Registration, Reports. Any registration or report required by 3 M.R.S.A. ch. 15 may be provisionally filed by transmission of a facsimile copy of the duly executed report to the Commission, provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

SECTION 5. FACT FINDING AND INVESTIGATIONS

1. Before Commission Meeting. With respect to any inquiry, report or request for Commission action properly filed in accordance with the preceding section, the Director may conduct such preliminary fact finding as is deemed prudent and desirable. When the Director and Counsel find a basis for a preliminary investigation, they will recommend such steps to the Chair as necessary. Pursuant to reviewing reports or finding of fact, the Director, in consultation with Counsel, will prepare a summary of findings and recommendations for inclusion on the agenda. The Chair is authorized to issue subpoenas in the name of the Commission to compel the attendance of witnesses or the production of records, documents or other evidence when the Chair and the Commission's Counsel are in agreement that the testimony or evidence sought by the subpoena is likely to be of critical importance to disposition of the matter; and to issue any subpoena in the name of the Commission on behalf of any person having a statutory right to an agency subpoena. Any oral testimony compelled by a subpoena issued by this provision will be presented initially and exclusively to the Commission.

2. By the Commission. Once any matter is reached on the agenda of a Commission meeting, the Commission will control any further investigation or proceedings. No hearings will be held except by direction of the Commission. On a case-by-case basis, the Commission may authorize its Chair, Director, or any ad hoc committee of its members, to conduct further investigative proceedings on behalf of the Commission between Commission meetings. Any authorization so conferred will be fully reflected in the minutes of the Commission meeting.

SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS

1. A loan is a contribution at the time it is made unless the loan was made by a financial institution in the State of Maine in the ordinary course of business. Loans continue to be contributions until they are repaid. Loans are subject to the candidate contribution limitations, except for loans made by the candidate, the candidate's spouse, or a financial institution in the State of Maine in the ordinary course of business.
2. Candidates and political action committees must report the occupation and employer of each individual contributor who gives, in the aggregate, more than \$50 for the reporting period. The reporting is required for private contributions raised by traditionally financed candidates and for seed money contributions to candidates participating in the Maine Clean Election Act. Candidates and political action committees must make a reasonable effort to obtain the employment information of the contributor. If a candidate or political action committee is unable to obtain the information from the contributor in response to a request, the candidate or committee shall indicate "information requested" in the occupation and employer sections of the campaign finance report.
3. Unless specifically exempted under Title 21-A M.R.S.A. Sections 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee.
4. An employer that has authorized an employee to provide services without charge to a candidate or political committee during the employee's paid work-time has made an in-kind contribution to the candidate or political

committee. No contribution has been made if the employee is providing services as a volunteer outside of the employee's paid work-time.

5. A commercial vendor that has extended credit to a candidate or political committee has not made a contribution if the credit is extended in the ordinary course of the vendor's business and the terms are substantially similar to extensions of credit made to nonpolitical debtors that are of similar risk and size of obligation.

SECTION 57. CONTENT OF CAMPAIGN FINANCE REPORTS EXPENDITURES

1. Expenditures By Consultants, Employees, and Other Agents of a Political Campaign. Expenditures made on behalf of a candidate, political committee, or political action committee by any person, agency, firm, organization, etc. employed or retained for the purpose of organizing, directing, managing or assisting the candidate, the candidate's committee, or the political action committee shall be deemed expenditures by the candidate or committee. Such expenditures must be reported by the candidate or committee as if made or incurred by the candidate or committee directly.
2. Expenditures By Political Action Committees. In addition to the requirements set forth in 21-A M.R.S.A. Section 1060(4), the reports must contain the purpose of each expenditure and the name of each payee and creditor.
3. Timing of Reporting Expenditures.
 - A. Placing an order with a vendor for a good or service; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service.
 - B. Expenditures must be reported at the earliest of the following events:
 - (1) The placement of an order for a good or service;
 - (2) The signing of a contract for a good or service;
 - (3) The delivery of a good or the performance of a service by a vendor;
 - (4) A promise or an agreement (including an implied one) that a payment will be made; or
 - (5) The making of a payment for a good or service.

C. At the time the duty to report an expenditure arises, the person submitting the report is required to determine the value of goods and services to be rendered (preferably through a written statement from the vendor) and to report that value as the amount of the expenditure. If the expenditure involves more than one candidate election, the report must include an allocation of the value to each of those candidate elections.

4. Advance Purchases of Goods and Services for the General Election.

A. Consulting services, or the design, printing or distribution of campaign literature or advertising, **including the creation and broadcast of radio and television advertising**, contracted or paid for prior to the primary election must be received prior to the primary election in order to be considered primary election expenditures.

B. If the Commission receives a complaint stating that a candidate or a committee purchased goods or services before a primary election for use in the general election, the Commission may request that the candidate or committee distinguish which of the goods and services were used in the primary election and which were used in the general election.

[RECOMMENDATION: DO NOT ADOPT FOLLOWING PARAGRAPH]

B. If a preponderance of the types of goods and services described in paragraph A purchased during the primary election cycle will be used during the general election cycle, then the candidate or any other person required to file a report with the Commission shall report these purchases as expenditures used for the general election cycle.

5. ~~In-Kind Contribution. "In-kind contribution" means any gift, subscription, loan, advance or deposit of anything of value other than money made for the purpose of influencing the nomination or election of any person to political office or for the initiation, support or defeat of a ballot question.~~

5. All payments made by a candidate or by individuals authorized by the candidate for the purpose of influencing the candidate's nomination or election must be reported as expenditures in the reporting period during which the payment is made, including payments made with the personal funds or credit card of the candidate or authorized individual. When the expenditure is reported, the candidate should indicate the person making

the payment by entering "Paid by [candidate or supporter]" in the remarks section of the expenditure schedule.

6. Multiple expenditures for bank fees and for vehicle travel may be reported in an aggregate amount, provided that the candidate or committee identifies the time period of the expenditures in the remarks section of the report.

SECTION 8. PROHIBITED COMMUNICATIONS

Commission members shall not discuss any specific case under investigation, or any case which may reasonably be expected to be the subject of investigation, as long as the matter is pending before the Commission and, where applicable, until anybody to whom the Commission renders an advisory opinion has concluded its action and any appeals therefrom have been exhausted.

SECTION 9. ACCELERATED REPORTING SCHEDULE

1. General. In addition to other reports required by law, any candidate for Governor, State Senator or State Representative who is not certified as a Maine Clean Election Act candidate under Title 21-A, section 1121 et seq., and who has a certified candidate as an opponent in an election must comply with the following reporting requirements on forms prescribed, prepared, and provided by the Commission.

INFORMATIONAL NOTE: Title 21-A, section 1017 prescribes reporting requirements for candidates.

2. 101% Report. Any candidate subject to this section, who receives, spends or obligates more than 1% in excess of the primary or general election distribution amounts for a Maine Clean Election Act candidate opponent in the same race, must file with the Commission, within 48 hours of such receipt, expenditure, or obligation, a report detailing the candidate's total campaign contributions, receipts, expenditures and obligations to date. The Commission will notify all candidates who have an opposing certified candidate of the applicable distribution amounts and of the 101% Report requirement.
3. Any traditionally funded candidate with a Maine Clean Election Act opponent shall file the following three reports detailing the candidate's total campaign contributions, obligations and expenditures to date, except that a candidate who has not received, spent, or obligated the amount sufficient to require a report under subsection 2 may file an affidavit, by

the date the report is due, attesting that the candidate has not received, spent or obligated that amount:

- A. a report filed not later than 5 p.m. on the 42nd day before the date on which an election is held that is complete as of the 44th day before the date of that election;
 - B. a report filed not later than 5 p.m. on the 21st day before the date on which an election is held that is complete as of the 23rd day before the date of that election; and
 - C. a report filed not later than 5 p.m. on the 12th day before the date on which an election is held that is complete as of the 14th day before the date of that election.
4. **24-Hour Report.** Any candidate who is required to file a 101% report must file an updated report with the Commission reporting single expenditures of \$1,000 or more by candidates for Governor, \$750 by candidates for State Senator, and \$500 by candidates for State Representative made after the 14th day before any election and more than 24 hours before 5 p.m. on the date of that election. The report must be submitted to the Commission within 24 hours of those expenditures.
5. **Filing by Facsimile or Electronic Means.** For purposes of this section, reports may be filed by facsimile or by other electronic means acceptable to the Commission, and such reports will be deemed filed when received by the Commission provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

SECTION 810. REPORTS OF INDEPENDENT EXPENDITURES

1. **General.** Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$100 per candidate in an election must file a report with the Commission according to this section.
2. **Definitions.** For purposes of this section, the following phrases are defined as follows:
- A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
 - B. "Expressly advocate" means any communication that uses phrases such as "vote for the Governor," "reelect your Representative,"

"support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!".

- C. "Independent expenditure" has the same meaning as in Title 21-A, section 1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.
3. Reporting Schedules. Independent expenditures must be reported to the Commission in accordance with the following provisions:
- A. Independent expenditures aggregating in excess of \$100 per candidate per election but not in excess of \$250 made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, except that expenditures made in the last 11 days before an election must be reported within 24 hours of the expenditure.
 - (1) Quarterly Reports.
 - (a) A report must be filed on January 15th and be complete as of January 5th;
 - (b) A report must be filed on April 10th and be complete as of March 31st;
 - (c) A report must be filed on July 15th and be complete as of July 5th; and
 - (d) A report must be filed on October 10th and be complete as of September 30th.

(2) Pre-Election and Post-Election Reports.

- (a) A report must be filed on the 6th 12th day before the election is held and be complete as of ~~the 12th day before the election that day.~~
- ~~(b) A report must be filed on the 42nd day after the election is held and be complete as of the 35th day after the election.~~

If the total of independent expenditures made to support or oppose a candidate exceed \$100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure. As long as the total amount spent with respect to the candidate does not exceed \$250, all reports must be filed according to the deadlines in this paragraph. If the total amount spent per candidate exceeds \$250, the reports must be filed in accordance with paragraph B.

[NOTE: FOR EXAMPLE, IF A COMMITTEE MAKES THREE \$80 EXPENDITURES IN SUPPORT OF A CANDIDATE ON SEPTEMBER 20, THE 15TH DAY BEFORE THE ELECTION AND THE 8TH DAY BEFORE THE ELECTION, THOSE THREE EXPENDITURES MUST BE REPORTED ON OCTOBER 10th, AND THE 12TH AND 7TH DAYS BEFORE THE ELECTION, RESPECTIVELY.]

- B. Independent expenditures aggregating in excess of \$250 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission within 24 hours of those expenditures. ~~Additional reports are required for subsequent increments of independent expenditures aggregating in excess of \$250 within 24 hours of these expenditures.~~ If any additional expenditures, regardless of amount, increase the total spent per candidate above the threshold of \$250, each additional expenditure must be reported within 24 hours.

[NOTE: FOR EXAMPLE, IF A COMMITTEE HAS REPORTED INDEPENDENT EXPENDITURES TOTALING \$300 IN SUPPORT OF A CANDIDATE, AND THE COMMITTEE MAKES AN ADDITIONAL \$50 INDEPENDENT EXPENDITURE IN SUPPORT OF THE CANDIDATE, THE ADDITIONAL \$50 EXPENDITURE MUST BE REPORTED WITHIN 24 HOURS.]

C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate. Reports filed after the eighth day before an election must include the following information:

1. the date on which the person making the expenditure placed the order with the vendor for the goods or services;
2. the approximate date when the vendor began providing design or any other services in connection with the expenditure;
3. the date on which the person making the expenditure first learned of the total amount of the expenditure; and
4. a statement why the expenditure could not be reported by the eighth day before the election.

4. Multi-Candidate Expenditures. When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.

A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.

[NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO 10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT, THE ALLOCATION OF THE EXPENDITURE SHOULD BE REPORTED AS: 50% FOR X, 20% FOR Y, and 30% FOR Z.]

B. If multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation.

[NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR'S RACE.]

C. If a candidate who has received matching funds because of a multi-candidate communication believes that he or she deserves additional matching funds because the communication disproportionately concerns his or her race, the Commission may grant additional matching funds in proportion to the relative treatment of the candidates in the communication.

5. Rebuttable Presumption. Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate in a race involving a Maine Clean Election Act candidate and that is disseminated during the 21 days before an election will be presumed to be an independent expenditure, unless the person making the expenditure submits a written statement to the Commission within 48 hours of the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.

A. The following types of communications may be covered by the presumption if the specific communication satisfies the requirements of Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) Printed advertisements in newspapers and other media;
- (2) Television and radio advertisements;
- (3) Printed literature;
- (4) Recorded telephone messages;
- (5) Scripted telephone messages by live callers; and
- (6) Electronic communications.

This list is not exhaustive, and other types of communications may be covered by the presumption.

B. The following types of communications and activities are not covered by the presumption, and will not be presumed to be independent expenditures under Title 21-A M.R.S.A. Section 1019-B(1)(B):

- (1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate or a political committee;

- (2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;
 - (3) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;
 - (4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and
 - (5) other communications and activities that are excluded from the legal definition of "expenditure" in the Election Law.
- C. If an expenditure is covered by the presumption and is greater, in the aggregate, than \$100 per candidate per election, the person making the expenditure must file an independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, election or defeat of a candidate. The filing of independent expenditure reports should be made in accordance with the filing schedule in subsections 3(A) and 3(B) of this rule. Independent expenditures aggregating \$100 or less per candidate per election do not require the filing of an independent expenditure report or a rebuttal statement.
- D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the 21-day period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.
- E. For the purposes of determining whether a communication is covered by the presumption, the date of dissemination is the date of the postmark, hand-delivery, or broadcast of the communication.
- F. An organization that has been supplied printed communications covered by the presumption and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed, unless the organization supplying the communications has already reported the costs of the materials to

the Commission. If the actual costs of the communications cannot be determined, the organization distributing the communication to voters must report the estimated fair market value.

- G. If a person wishes to distribute a specific communication that appears to be covered by the presumption and the person believes that the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.

SECTION 11. REPORTS OF BALLOT QUESTION CAMPAIGN ACTIVITY BY PERSONS AND ORGANIZATIONS OTHER THAN POLITICAL ACTION COMMITTEES

When a person or organization is required under 21-A M.R.S.A. Section 1056-B to file reports because of contributions or expenditures of more than \$1,500 made in support of or in opposition to a ballot question, the reports must be filed according to the following schedule:

1. Quarterly Reports. Reports must be filed on the following deadlines until the date of the election on which the question is on the ballot:
 - A. A report must be filed on January 15th and be complete as of January 5th;
 - B. A report must be filed on April 10th and be complete as of March 31st;
 - C. A report must be filed on July 15th and be complete as of July 5th; and
 - D. A report must be filed on October 10th and be complete as of September 30th.
2. Pre- and Post-Election Reports. The person or organization must file the following reports:
 - A. A report must be filed on the 6th day before the election is held and be complete as of the 12th day before the election.
 - B. A report must be filed on the 42nd day after the election is held and be complete as of the 35th day after the election.
3. 24-Hour Reports. Any contribution or expenditure in excess of \$500 made after the 12th day before the election and more than 24 hours before the

election must be reported within 24 hours of that contribution or expenditure or by noon of the first business day after the contribution or expenditure, whichever is later.

SECTION 12. CAMPAIGN CONTRIBUTIONS DURING LEGISLATIVE SESSION

1. Seed Money Contributions. Legislators and other individuals covered by Title 1 M.R.S.A. Section 1015(3)(B) may not intentionally solicit or accept a seed money contribution from a lobbyist or lobbyist associate during any period of time in which the Legislature is convened until final adjournment.
2. Acceptance of Contributions Through Political Action Committees. During a legislative session, political action committees that are closely associated with a Legislator, such as committees organized to elect a candidate or Legislator to a leadership position or committees organized to elect the candidates of a legislative caucus, may not intentionally solicit or accept a contribution from a lobbyist, lobbyist associate, or employer. During the legislative session, these political action committees may accept contributions from individuals and organizations that are not lobbyists, lobbyist associates, and their employers. Lobbyists, lobbyist associates, and employers may not contribute to political action committees closely associated with a Legislator during a legislative session, unless their contributions are segregated in a fund that is not used to influence the election or defeat of any incumbent Legislators.
3. Making a Contribution Through a Political Action Committee. During a legislative session, an organization that employs a lobbyist may not make a contribution through a political action committee with which the organization is affiliated or direct that the affiliated political action committee make a contribution to a Legislator.

Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS

[NOTE: THE COMMISSION PROPOSES MOVING THE DEFINITIONS SECTION TO CHAPTER 1 OF THE COMMISSION RULES.]

SECTION 1. DEFINITIONS

~~As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings:~~

- ~~1. Act. "Act" means the Maine Clean Election Act, Title 21-A, chapter 14.~~
- ~~2. Campaign Deficit. "Campaign deficit" means debts, liabilities, and unmet financial obligations from all previous campaigns as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§ 1017(9)].~~
- ~~3. Campaign Surplus. "Campaign surplus" means money, equipment, property and other items of value remaining after retiring previous campaign deficit as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§ 1017(9)].~~
- ~~4. Candidate. "Candidate" has the same meaning as in Title 21-A, chapter 1, subchapter I [§ 1(5)].~~

~~[INFORMATIONAL NOTE: All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election. Commission Rules, chapter 1, subdivision 3.2.A(5)(e). A candidate who collects funds subsequent to an election for purposes other than retiring campaign debt is required to register with the Commission. Title 21-A, chapter 13, subchapter II [§ 1013-A].~~

- ~~5. Certified Candidate. "Certified candidate" has the same meaning as in the Act [§ 1122(1)].~~
- ~~6. Commission. "Commission" means the Commission on Governmental Ethics and Election Practices established by Title 5, section 12004-G, subsection 33, and 1 M.R.S.A. section 1001 et seq.~~
- ~~7. Contribution. "Contribution" has the same meaning as in Title 21-A, chapter 13, subchapter II [§ 1012(2)].~~

- ~~8. Election. "Election" means any primary, general or special election for Governor, State Senator or State Representative. The period of a primary election begins on the day a person becomes a candidate as defined in 21-A M.R.S.A. §1(5) and ends on the date of the primary election. The period of a general election begins on the day following the previous primary election and ends on the date of the general election. The period of a special election begins on the date of proclamation of the special election and ends on the date of the special election.~~
- ~~9. Expenditure. "Expenditure" has the same meaning as in Title 21-A, chapter 13, subchapter II [§ 1012(3)].~~
- ~~10. Fund. "Fund" means the Maine Clean Election Fund established by the Act [§ 1124].~~
- ~~11. Nonparticipating Candidate. "Nonparticipating candidate" has the same meaning as in the Act [§ 1122(5)].~~
- ~~12. Participating Candidate. "Participating candidate" has the same meaning as in the Act [§ 1122(6)].~~
- ~~13. Qualifying Contribution. "Qualifying Contribution" has the same meaning as in the Act [§ 1122(7)].~~
- ~~14. Qualifying Period. "Qualifying period" has the same meaning as in the Act, except that for special elections, vacancies, withdrawals, deaths, disqualifications or replacements of candidates, the qualifying period shall be the period designated in section 8 of this chapter [§ 1122(8)].~~
- ~~15. Seed Money Contribution. "Seed money contribution" has the same meaning as in the Act [§ 1122(9)].~~

SECTION 21. APPLICABILITY

This chapter applies to candidates running for Governor, State Senator and State Representative who choose the alternative campaign financing option established by the Maine Clean Election Act for elections to be held beginning in the year 2000. Candidates participating in the Maine Clean Election Act must comply with these rules and all other applicable election and campaign laws and regulations. Some sections in this chapter also apply to and impose obligations on traditionally financed candidates and political committees that raise contributions and make expenditures in races involving Maine Clean Election Act candidates.

SECTION 32. PROCEDURES FOR PARTICIPATION

1. Declaration of Intent. A participating candidate must file a Declaration of Intent before collecting qualifying contributions. The Commission will provide a form for this purpose.
2. Content. The Declaration of Intent ~~must be sworn and notarized and~~ must include the following information:
 - A. an affirmation that the candidate is seeking certification as a Maine Clean Election Act candidate;
 - B. an affirmation that the candidate has not collected any qualifying contributions before signing the Declaration of Intent;
 - C. an affirmation that the candidate has not accepted any contributions, except for seed money contributions, after becoming a candidate;
 - D. an affirmation that the candidate has disposed of any campaign surplus before becoming a candidate for the new election, as required by paragraph 3.C [Campaign Surplus] of this section;
 - E. an affirmation that if the candidate has any campaign deficit, that the candidate will not accept contributions to repay that deficit as a participating candidate or certified candidate, except that the candidate may forgive any campaign loans to himself or herself made during any previous campaigns;
 - F. an affirmation that the candidate will continue to comply with applicable seed money restrictions and other requirements of the Act including, but not limited to, procedures for collecting qualifying contributions;
 - G. information identifying the candidate's treasurer, political committee, campaign finance account, social security number, and/or federal tax identification number; and
 - H. authorization by the candidate for the Commission, its agents or representatives to conduct financial audits of the candidate's campaign financial records and account(s).

3. Seed Money Restrictions.

- A. General. After becoming a candidate and before certification, a participating candidate may collect and spend only seed money contributions. The restrictions on seed money contributions apply to both cash and in-kind contributions.
- B. Total Amount.
- (1) A participating candidate must limit the candidate's total seed money contributions to the following amounts:
 - (a) fifty thousand dollars for a gubernatorial candidate;
 - (b) one thousand five hundred dollars for a candidate for the State Senate; or
 - (c) five hundred dollars for a candidate for the State House of Representatives.
 - (2) Notwithstanding any other provision of this chapter, a candidate may carry forward to a new candidacy of that candidate campaign equipment or property, subject to the reporting requirements of Title 21-A, chapter 13 [Campaign Reports and Finances].
 - (3) The Commission periodically will review these limitations and, through rulemaking, revise these amounts to ensure effective implementation of the Act.
- C. Campaign surplus. A candidate who has carried forward campaign surplus according to Title 21-A, chapter 13, subchapter II [§ 1017(8) and §1017(9)], and who intends to become a participating candidate, must dispose of campaign surplus in accordance with the requirements of Title 21-A, chapter 13, subchapter II [§ 1017(8)]; provided, however, that a candidate may carry forward only those portions of campaign surplus that comply with the provisions of this Act regarding seed money contributions [§ 1122(9) and 1125(2)]. Any campaign surplus (excluding campaign equipment or property) carried forward under this provision will be counted toward that candidate's total seed money limit.

INFORMATIONAL NOTE: The Commission will provide educational materials to all former candidates who have a campaign surplus describing the requirement that individuals must

dispose of campaign surplus to remain eligible for participation as a Maine Clean Election Act candidate.

- D. **Return of Contributions Not in Compliance with Seed Money Restrictions.** A participating candidate who receives a contribution exceeding the seed money per donor restriction or the total amount restriction must immediately return the contribution and may not cash, deposit, or otherwise use the contribution.
- E. **Case-by-Case Exception.** A participating candidate who has accepted contributions or made expenditures that do not comply with seed money restrictions may petition the Commission to remain eligible for certification as a Maine Clean Election Act candidate. The Commission may approve the petition and restore a candidate's eligibility for certification if the candidate successfully establishes all of the following criteria:
- (1) the failure to comply was the result of an unintentional ~~administrative or accounting~~ error;
 - (2) the candidate immediately returned all contributions that did not comply with seed money restrictions or paid for goods or services contributed that did not comply with seed money restrictions;
 - (3) the candidate petitioned the Commission promptly upon becoming aware of the unintentional ~~administrative or accounting~~ error; and
 - (4) the failure to comply did not involve expenditures by the participating candidate significantly in excess of seed money total amount restrictions or otherwise constitute systematic or significant infractions of seed money restrictions.
- F. Accepting a loan from any source including a financial institution prior to certification, or spending money received in the form of a loan, is a violation of the seed money restrictions of the Act.
- FG. **Other.** A seed money contributor may also make a qualifying contribution to the same participating candidate provided that the contributor otherwise meets the requirements for making a qualifying contribution.

4. Qualifying Contributions.

- A. General. A participating candidate may collect qualifying contributions only during the relevant qualifying period and only after filing a Declaration of Intent with the Commission. Qualifying contributions must be acknowledged using forms provided by the Commission. The forms will include an affirmation by the contributor that the contributor received nothing of value in exchange for the signature and contribution.
- B. Required Number of Qualifying Contributions. A participating candidate must obtain the number of qualifying contributions during the qualifying period as required by the Act [§ 1122(7); § 1122(8); § 1125(3)].
- C. Exchanges For Qualifying Contributions Prohibited.
- (1) A participating candidate or an agent of that candidate may not give or offer to give a payment, gift, or anything of value in exchange for a qualifying contribution.
 - (2) This provision does not prohibit a participating candidate or that candidate's agent from collecting qualifying contributions at events where food or beverages are served, or where campaign promotional materials are distributed, provided that the food, beverage, and campaign materials are offered to all persons attending the event regardless of whether or not particular persons make a qualifying contribution to the participating candidate.
 - (3) This provision does not prohibit a candidate from using seed money to pay the fee for a money order provided the qualifying contributor pays the \$5 amount reflected on the money order as permitted by 21-A M.R.S.A. §1125(3).
- D. Checks Drawn on Business Accounts. Qualifying contributions must be made with the personal funds of the contributor. The Commission will not count a check drawn from an account with a business name toward the eligibility requirements, unless the name of the contributor is included in the name of the account or the candidate submits a written statement from the contributor indicating that he or she uses the business account for personal expenses.

E. Family Members. Family members, domestic partners, and live-in caregivers who reside in a single household may make qualifying contributions in the form of a single check or money order of more than \$5 provided that:

- (1) all contributors sign the receipt and acknowledgement form;
- (2) all contributors are registered to vote at the address of the household; and
- (3) all contributions are made with the personal funds of the contributors.

DE. Verification of Registered Voters.

- (1) Before submitting qualifying contributions to the Commission, a participating candidate must establish that contributors who made qualifying contributions to that candidate are registered voters.
- (2) A participating candidate must obtain written verification from the Registrar of the number of persons providing qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.
- (3) Upon request of a participating candidate, and within 10 business days after the date of the request, the Registrar must verify the names of contributors of qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.

EG. Timing of Verification. For purposes of this chapter, the Commission will deem verification of registered voters by the Registrar at any time during the qualifying period to be an accurate verification of voter registration even if the registration status of a particular voter may have changed at the time the Commission determines certification of the participating candidate.

FH. Submission of Verified Qualifying Contributions. A participating candidate may submit a completed request for certification to the Commission at any time during the qualifying period. The request will be deemed complete and the candidate will be certified only if:

- (1) if the request is accompanied by the original signed qualifying contributions forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking; or

- (2) the candidate submits to the Commission during the qualifying period or by a statement of the candidate that such signature forms have been submitted to the Registrar(s) for verification on a specific date and the verified signature forms will be received by the Commission within 10 business days thereafter, and submits to the Commission during the qualifying period photocopies of the signature forms.

SECTION 43. CERTIFICATION OF PARTICIPATING CANDIDATES

1. Request for Certification.

- A. After final submission of qualifying contributions, but not later than 5:00 p.m. on the last day of the relevant qualifying period, a participating candidate may request certification as a Maine Clean Election Act candidate ~~on forms provided by the Commission.~~
- ~~B. The request for certification must contain the candidate's affirmation that the candidate will comply with all requirements of the Act and the Commission's rules, and the candidate's acknowledgment that, as long as that person remains a candidate, he or she may not discontinue participation under the Maine Clean Election Act alternative campaign financing option without violating the Act [§ 1127] and becoming obligated to return all amounts distributed to the candidate from the Fund.~~
- GB. All participating candidates must submit qualifying contributions in alphabetical order to the Commission along with qualifying contribution forms and an alphabetical list of contributors of qualifying contributions when applying for certification as a Maine Clean Election Act candidate. Candidates who do not submit the required number of original qualifying contributions within the qualifying period will not be certified.
- DC. The Commission will review candidate applications for certification in the order in which they are received, except that it will give priority to those candidates who are in a contested primary election.

2. Reporting. Together with the request for certification, a participating candidate must report all seed money contributions received, any other contributions received, and expenditures and obligations made after becoming a candidate.

3. Unspent Seed Money. Together with the request for certification, a participating candidate must report any unspent seed money. In order to distribute funds expeditiously, the Commission will deduct from the initial distribution from the Fund to a certified candidate an amount equal to the amount of unspent seed money reported by that candidate.
4. Certification. The Commission will certify a candidate as a Maine Clean Election Act candidate upon the participating candidate's satisfaction of the requirements of the Act [§ 1125] and this chapter.
5. Appeals. Any appeals challenging a certification decision by the Commission must be in accordance with the Act [§ 1125(14)].
6. ~~Limitations on Campaign Expenses. A certified candidate must:~~
 - A. ~~limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts plus any authorized Matching Fund allocations;~~
 - B. ~~not accept any contributions unless specifically authorized in writing to do so by the Commission in accordance with the Act [§ 1125(2) and § 1125(13)];~~
 - C. ~~use revenues distributed from the Fund only for campaign-related purposes according to guidelines outlining permissible campaign-related expenditures published by the Commission; and~~
 - D. ~~not use revenues distributed from the Fund for personal use.~~

SECTION 54. FUND ADMINISTRATION

1. Coordination with State Agencies. The Commission will coordinate with the Bureau of Accounts and Control and other relevant State agencies to ensure the use of timely and accurate information regarding the status of the Fund.
2. Publication of Fund Revenue Estimates. By September 1st preceding each election year, the Commission will publish an estimate of revenue in the Fund available for distribution to certified candidates during the upcoming year's election. The Commission will update the estimate of available revenue in the Fund after April 15th of an election year and again within 30 days after the primary election in an election year.
3. Computation of Disbursement Amounts. By July 1, 1999, and at least every 4 years after that date, the Commission will determine the amount

of revenue to be distributed to certified candidates based on the type of election and office in accordance with the Act [§ 1125(8)].

4. **Distributions Not to Exceed Amount in Fund.** If the Commission determines that the revenues in the Fund are insufficient to meet distributions under this chapter, the Commission will permit certified candidates to accept and spend contributions in accordance with the Act [§ 1125(13)]. The Commission will notify participating and certified candidates in writing of any projected shortfall in the Fund and will specify timelines and procedures for compliance with this chapter in the event of any such shortfall.

SECTION 65. DISTRIBUTION OF FUNDS TO CERTIFIED CANDIDATES

1. Fund Distribution.

- A. **Establishment of Account.** Upon the certification of a participating candidate, the Commission will establish an account with the Bureau of Accounts and Control, or such other State agency as appropriate, for that certified candidate. The account will contain sufficient information to enable the distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund.
- B. **Manner of Distribution of Fund.** The Commission will authorize distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund. Such means may include, but are not limited to:
 - (1) checks payable to the certified candidate or the certified candidate's political committee; or
 - (2) electronic fund transfers to the certified candidate's or the certified candidate's political committee's campaign finance account.

2. Timing of Fund Distributions.

- A. **Distribution of Applicable Amounts.** The Commission will authorize the initial distribution of applicable amounts from the Fund to certified candidates in accordance with the time schedule specified in the Act [§ 1125(7)] and this Chapter [sec. 3.4].

INFORMATIONAL NOTE: An initial distribution from the Fund will not be made to a candidate until the Commission has certified that candidate in accordance with the provisions of the Act and this chapter. The initial distribution may be delayed if a candidate submits a list of qualifying contributors to the Registrar for verification during the last 10 business days of the qualifying period.

B. Matching Fund Allocations. At any time after certification, revenues from the Fund may be distributed to certified candidates in accordance with subsection 3, below.

C. Advances.

- (1) To facilitate administration of the Matching Fund Provision of this chapter, and to encourage participation in the Act, the Commission may authorize the advance distribution of revenues from the Fund to certified candidates. In determining whether to authorize such advances and the amounts of any such advances, the Commission will consider the amount of revenue in the Fund, the number of certified candidates, the number of nonparticipating candidates, and information contained in campaign finance and independent expenditure reports.
- (2) A certified candidate may only draw upon, spend or otherwise use, such advance Fund distributions after receiving written notification from the Commission authorizing a Matching Fund allocation in a specified amount. Written notification by the Commission may be by letter, facsimile or electronic means.

3. Matching Fund Provision.

A. General. The Commission will authorize immediately an allocation of matching funds to certified candidates in accordance with the Act when the Commission determines that the eligibility for receipt of matching funds has been triggered [§ 1125(9)].

B. Computation and Distribution. The Commission will determine a certified candidate's allocation of matching funds, if any, in the following manner:

- (1) The Commission first will add --
 - (a) the sum of an opposing candidate's expenditures and obligations, or funds raised and borrowed, whichever

is greater, including surplus or unspent funds carried forward from a previous primary, general, or special election to the current election; and

- (b) the sum of the independent expenditures made expressly advocating the defeat of the certified candidate or the election of the same opposing candidate.
- (2) The Commission then will subtract --
- (a) the sum of the independent expenditures made expressly advocating the defeat of the same opposing candidate; and
 - (b) the sum of the independent expenditures made expressly advocating the election of the certified candidate; and
 - (c) the sum of any matching funds already provided to the certified candidate; and
 - (d) the sum of any seed money raised in computing matching fund eligibility for a primary, general, or special election, as applicable; or any surplus or unspent funds carried forward from a previous primary election to the subsequent general election in computing matching fund eligibility for a general election.
- (3) If the final computed amount is greater than the applicable distribution amount for the certified candidate, then the Commission will immediately authorize the distribution of a Matching Fund allocation to the certified candidate equal to that excess.
- (4) The Commission will make computations promptly upon the filing of campaign finance reports and independent expenditure reports.
- (5) To prevent the abuse of the Matching Fund Provision, the Commission will not base any calculation on independent expenditures that, although containing words of express advocacy, also contain other words or phrases that have no other reasonable meaning than to contradict the express advocacy. For example, expenses related to a

communication saying, "Vote for John Doe -- he's incompetent and inexperienced," will not be considered a communication in support of John Doe in the calculation of matching funds.

- C. Matching Fund Cap. Matching funds are limited to 2 times the amount originally distributed to a certified candidate from the Fund for that election. Certified candidates are not entitled to cumulative matching funds for multiple opponents.
- D. Other. Any distribution based on reports and accurate calculations at the time of distribution is final, notwithstanding information contained in subsequent reports.
- E. Coordination with Other State Agencies. The Commission will coordinate with the Bureau of Accounts and Control and other relevant State agencies to implement a mechanism for the distribution of Fund revenues to certified candidates that is expeditious, ensures public accountability, and safeguards the integrity of the Fund.
- F. Disbursements With No Campaign Value. If a traditionally financed candidate has received monetary contributions which are disbursed in ways that do not in any way influence the nomination or election of the candidate, those receipts will not be considered by the Commission in calculating matching funds for his or her opponent. Such disbursements may include repaying a loan received by the candidate, refunding a contribution to a contributor, or transferring funds to a party or political committee for purposes that do not relate to the candidate's race.

4. Advance Purchases of Goods and Services for the General Election.

- A. If a preponderance of consulting services, or the design, printing, or distribution of campaign literature and advertising, including radio and television advertising, purchased prior to the primary election by an opponent of a certified Maine Clean Election Act candidate are used for the general election, then the portion to be used for the general election must be counted as a general election receipt in calculating the amount of matching funds for the certified Maine Clean Election Act candidate.
- B. If a certified candidate in a general election believes that an opponent, or person or committee making an independent expenditure, has failed to disclose an advance purchase for the general election, the certified candidate shall submit a written

request for an investigation to the Commission no later than August 30 of the election year, or within 30 days of the opponent's filing of the 42-day post-primary report, whichever is later. The request must identify the pre-primary election expenditure that is believed to be for the general election and must state a specific basis for believing that the goods and services purchased were not used for the primary election.

- C. The Commission will request a response from the opposing candidate or other respondent, and will make a determination whether the expenditure should be counted toward the certified candidate's eligibility for matching funds.

SECTION 6. LIMITATIONS ON CAMPAIGN EXPENSES.

A certified candidate must:

1. limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts plus any authorized Matching Fund allocations;
2. not accept any contributions unless specifically authorized in writing to do so by the Commission in accordance with the Act [§ 1125(2) and § 1125(13)];
3. use revenues distributed from the Fund only for campaign-related purposes as outlined in guidelines published by the Commission, and not for personal or any other use;
4. not use revenues distributed from the Fund to purchase goods to sell for profit;
5. not spend more than the following amounts of Fund revenues on post-election parties, thank you notes, or advertising to thank supporters or voters:
 - A. \$250 for a candidate for the State House of Representatives;
 - B. \$750 for a candidate for the State Senate; and
 - C. \$2,500 by a gubernatorial candidate.

The candidate may also use his or her personal funds for these purposes; and

6. not use revenues distributed from the Fund for the payment of fines, forfeitures, or civil penalties, or for the defense of any enforcement action of the Commission.

SECTION 7. RECORD KEEPING AND REPORTING

1. Record Keeping by Participating and Certified Candidates. Participating and certified candidates must comply with applicable record keeping requirements set forth in Title 21-A, chapter 13, subchapter II [§1016].
 - A. Fiduciary Responsibility for Funds. All funds provided to a certified candidate or to a candidate's authorized political committee must be segregated from, and may not be commingled with, any other funds. Matching fund advance revenues for which no spending authorization has been issued must be deposited in a federally insured financial institution until the candidate receives authorization to spend those funds.
 - B. Meal Expenses. A candidate or treasurer must obtain and keep a record for each meal expenditure of more than \$50. The record must include itemized bills for the meals, the names of all participants in the meals, the relationship of each participant to the campaign, and the specific, campaign-related purpose of each meal.
 - C. Vehicle Travel Expenses. A candidate or treasurer must obtain and keep a record of vehicle travel expenses for which reimbursements are made from campaign funds. Reimbursement may be based using either the standard mileage rate or actual expenses. The candidate must use one method exclusively during an election campaign.
 - (1) Standard Mileage Rate. The standard mileage rate is a set rate per mile that a candidate may use to compute reimbursable vehicle travel expenses. Reimbursement should be calculated using the standard mileage rate currently prescribed for employees of the State of Maine. For each trip for which reimbursement is made, a record should be maintained showing the dates of travel, the number of miles traveled, the origination, destination and purpose of the travel, and the total amount claimed for reimbursement.

- (2) **Actual Expenses.** Actual expenses include the pro rata, campaign-related share of vehicle depreciation or lease payments, maintenance and repairs, gasoline (including gasoline taxes), oil, insurance, and vehicle registration fees, etc. For reimbursement using this method, the candidate must maintain detailed records reflecting use of the vehicle for campaign-related purposes. The records must include the dates the vehicle was used for campaign-related purposes, the total mileage the vehicle was used for campaign-related purposes, the total mileage the vehicle was used for all purposes during the period for which reimbursement is made, and the percentage of total vehicle usage that the vehicle was used for campaign-related purposes.

2. **Reporting by Participating and Certified Candidates.**

- A. **General.** Participating and certified candidates must comply with applicable reporting requirements set forth in Title 21-A, chapter 13, subchapter II [§ 1017].
- B. **Return of Matching Fund Advances and Unspent Fund Revenues.** Matching Fund advance revenues that have not been authorized for spending and unspent Fund revenues shall be returned to the Fund as follows:
 - (1) **Unauthorized Matching Funds.** Candidates must return all Matching Fund advance revenues for which no spending authorization was issued prior to an election to the Commission by check or money order payable to the Fund within 2 weeks following the date of the election.
 - (2) **Unspent Fund Revenues for Unsuccessful Primary Election Candidates.** Upon the filing of the 42-day post-primary election report for a primary election in which a certified candidate was defeated, that candidate must return all unspent Fund revenues to the Commission by check or money order payable to the Fund.
 - (3) **Unspent Fund Revenues for All General and Special Election Candidates.** Upon the filing of the 42-day post-election report for a general or special election, all candidates must return all unspent Fund revenues to the Commission by check or money order payable to the Fund.

- C. Liquidation of Property and Equipment. Property and equipment that is not exclusive to use in a campaign (e.g., computers and associated equipment, etc.) that has been purchased with Maine Clean Election Act funds loses its campaign-related purpose following the election. Such property and equipment must be liquidated at its fair market value and the proceeds thereof reimbursed to the Maine Clean Election Fund as unspent fund revenues in accordance with the schedule in paragraph B above.
- (1) The liquidation of campaign property and equipment may be done by sale to another person or purchase by the candidate.
 - (2) Liquidation must be at the fair market value of the property or equipment at the time of disposition. Fair market value is determined by what is fair, economic, just, equitable, and reasonable under normal market conditions based upon the value of items of similar description, age, and condition as determined by acceptable evidence of value.

SECTION 8. RECOUNTS, VACANCIES, WRITE-IN CANDIDATES, SPECIAL ELECTIONS

1. Recounts. After a primary election, if there is a recount governed by Title 21- A, chapter 9, subchapter III, article III [§ 737-A], and either the leading candidate or the 2nd-place candidate is a certified candidate, the following provisions will apply:
 - A. If the margin between the leading candidate and the 2nd-place candidate is less than 1% of the total number of votes cast in that race and a recount is presumed necessary, the certified candidate immediately must halt the expenditure of revenues disbursed to the candidate from the Fund upon receiving notice of the recount until the recount is complete.
 - B. If the recount results in a changed winner, the certified candidate who originally received the disbursement must return any unspent distributions from the Fund to the Commission, payable to the Fund. If the new winner is a certified candidate, the Commission will distribute the applicable disbursement amount to the candidate.
 - C. If the margin between the leading candidate and 2nd-place candidate is 1% or greater of the total number of votes cast in that race and the 2nd-place candidate requests a recount, the leading

candidate, if a certified candidate, is not required to freeze expenditures of the disbursement.

- D. If the recount results in a changed winner, the certified candidate must return any unspent distributions from the Fund to the Commission, payable to the Fund. If the new winner is a certified candidate, the Commission will distribute the applicable disbursement amount to the candidate.

2. Death, Withdrawal, or Disqualification of a Candidate During Campaign.

- A. Death, Withdrawal, or Disqualification Before Primary Election. If a candidate dies, withdraws, or is disqualified before the primary election, the Commission will establish a qualifying period during which any replacement candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.
- B. Death, Withdrawal, or Disqualification After the Primary Election and before 5:00 p.m. on the 2nd Monday in July Preceding the General Election. If a candidate dies, withdraws, or is disqualified before 5:00 p.m. on the 2nd Monday in July preceding the general election, any replacement candidate will have a qualifying period from the time of the candidate's nomination until of 30 days after ~~from~~ the 4th Monday in July as a participating candidate to collect qualifying contributions and request certification.
- C. Death, Withdrawal, or Disqualification after 5:00 p.m. on the 2nd Monday in July Preceding the General Election. If a candidate dies, withdraws, or is disqualified after 5:00 p.m. on the 2nd Monday in July preceding the general election, the Commission will establish a qualifying period during which any replacement candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.
- D. Replacement Candidates Who Are Participating Candidates. Any replacement candidate choosing to become a participating candidate must otherwise comply with the requirements of this chapter and the Act including, but not limited to, seed money limits and qualifying contribution requirements. The Commission will notify any replacement candidates of the opportunity to participate in the Act and the procedures for compliance with this chapter during a special election.

3. Write-In Candidates.

- A. Write-in candidates are subject to the registration requirements of Title 21-A M.R.S.A. Section 1013-A and the campaign finance reporting requirements of Section 1017, as soon as they qualify as a nominee pursuant to 21-A M.R.S.A. Section 723, file a declaration of write-on candidacy with the Secretary of State pursuant to 21-A M.R.S.A. Section 722-A, or receive contributions or make expenditures with the intent of qualifying as a candidate in the primary or general election, whichever first occurs.
- B. Write-in candidates may not participate in the Maine Clean Election Act, except as provided in paragraph C.
- C. A write-in candidate in a primary election who becomes a party's nominee may participate in the Maine Clean Election Act for the general election. The Commission will establish a qualifying period during which the candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.
- D. A candidate who is participating in the Maine Clean Election Act and who has no opponent listed on the ballot will be presumed to be in an uncontested election even if there are one or more individuals running as write-in candidates. The participating candidate may rebut this presumption by presenting evidence to the Commission that the write-in opponent(s) received or spent substantial campaign funds. Based upon the evidence presented, the Commission may make a determination that it is a "contested election" and make a distribution of public funds to the participating candidate on that basis.

34. Special Election When One or More Candidates Desire to Become Certified Candidates. If a vacancy occurs in the office of Governor, Senator, or Representative because an incumbent dies, resigns, becomes disqualified, or changes residence to another electoral division, and a special election will be held to fill the vacant office, the following provisions apply:

- A. The Commission, in consultation with the Secretary of State, will establish a qualifying period during which any candidate in a special election may decide to become a participating candidate, collect qualifying contributions, and apply to become a certified candidate; and

- B. Any candidate in a special election must otherwise comply with the requirements of this chapter and the Act including, but not limited to, seed money limits and qualifying contribution requirements. The Commission will notify any candidates of the opportunity to participate in the Act and the procedures for compliance with this chapter during a special election.

45. Return of Unspent Fund Revenues. Any time a certified candidate withdraws, is disqualified, or dies before an election, the candidate or the candidate's agent must return to the Commission all unspent amounts distributed to the candidate by check or money order payable to the fund, within 2 weeks of the termination of the candidacy.

STATUTORY AUTHORITY:

1 M.R.S.A. § 1003(1); 21-A M.R.S.A. § 1126.

EFFECTIVE DATE:

November 1, 1998

NON-SUBSTANTIVE CHANGES:

December 3, 1998 - minor spelling and formatting.

2002 MAJOR SUBSTANTIVE RULE-MAKING

AMENDMENTS PROVISIONALLY ADOPTED:

February 13, 2002

LEGISLATIVE REVIEW OF PROVISIONAL MAJOR SUBSTANTIVE RULE:

April 8, 2002

COMMISSION ADOPTION OF FINAL RULE:

May 1, 2002

EFFECTIVE DATE:

July 31, 2002

2005 MAJOR SUBSTANTIVE RULE-MAKING

DATE OF PROVISIONAL ADOPTION OF AMENDMENTS:

April 8, 2005

DATE OF FINAL ADOPTION OF AMENDMENTS:

July 13, 2005

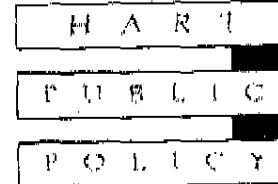
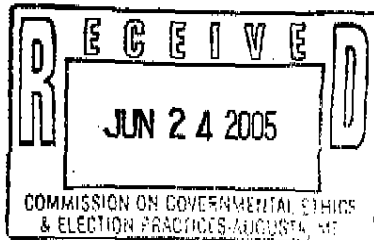
BASIS STATEMENT:

These amendments to Chapters 1 and 3:

- clarify those goods and services which are considered in-kind contributions to candidates and political committees;
- offer guidance on when to report expenditures, including goods and services purchased before the primary election that will be used for the general election;
- amend the reporting schedule for small independent expenditures, and requires additional information for independent expenditures reported in the last seven days before an election;
- instruct independent spenders how to allocate the costs of communications which relate to multiple candidates;
- offer guidance on the presumption that communications naming candidates in the last 21 days before the election are independent expenditures;
- clarify the prohibition on accepting contributions from lobbyists during the legislative session;
- modify the requirements for seed money and qualifying contributions;
- place further limitations on expenditures of Maine Clean Election Act funds; and
- establish policies regarding write-in candidates.

Agenda

Item #6



June 22, 2005

Jonathan Wayne, Executive Director
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333-0135

Re: Lobbyist Reports

Dear Jonathan:

I just returned from Boston and found Martha's letter that my May lobbyist disclosure reports had not been filed. I was totally surprised that I had failed to file the reports; a fact that was confirmed when I looked at my records.

At the end of May I began traveling to Boston on a weekly basis for doctor's appointments at Beth Israel Deaconess Medical Center for medical treatments. Needless to say, at the end of the session these visits added additional stress to a very busy time of the year for me. I am self employed and do all of my work without assistance, including filing monthly lobby reports, which I typically file on the first day of each month.

In closing, I have been lobbying in Maine for 20 years. I take my job and its responsibilities very seriously and sincerely regret that I missed a deadline. I will be available on July 13th for the Commission meeting and hope that they might consider these circumstances. I just picked up my mail today and received the letter that my reports are overdue. I will be filing the May reports electronically forthwith.

Best regards,

A handwritten signature in dark ink, appearing to read "Debra".

Debra A. Hart, President
Hart Public Policy, Inc.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Ms. Debra Hart, Lobbyist for:
Bangor Gas Co.

From: Martha Currier-Demeritt, Lobbyist Registrar

Date: June 16, 2005

Our records show that your May monthly lobbyist disclosure report has not been filed to date. The monthly report, due on the 15th of every month, is required to be filed by all lobbyists registered with the Commission.

In addition, 3 M.R.S.A. §319(1) states that any person who fails to file a timely report may be assessed a penalty of \$100 for every month the person is delinquent in filing the report; thus, to date your penalty is \$100. If you agree with this preliminary determination, you may use the attached billing statement to pay that penalty within 30 days of the date of this notice. Please mail your remittance to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333.

However, if you have a valid reason for filing late, you may request a final penalty determination by the Commission. Requests for penalty waivers should be addressed to the Executive Director of the Commission, Jonathan Wayne. The Commission will notify you of the disposition of your case within 10 days after its determination.

To avoid further penalty, you should file the report as soon as possible. Pursuant to 3 M.R.S.A. § 319(1-A), any person who fails to file a report or pay a fee may be suspended from further lobbying by written notice of the Commission until such failure is corrected.

Please direct any questions you may have about this matter to me at (207) 287-6221.

Cut Along Dotted Line

To: Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

From: Ms. Debra Hart, Lobbyist for:
Bangor Gas Co.

Re: Penalty for late filing of the May 2005 monthly lobbyist disclosure report (\$100)

For Office Use Only
Account: CGEEP
Fund: 014
Appr: 01

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

Please Make Check or Money Order Payable to Treasurer, State of Maine

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Page 1 of 1



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BANGOR GAS

Lobbyist: Ms. Debra A. Hart

Date Report Filed: 6/22/2005 12:37:54 PM

Monthly Report -- Long Form

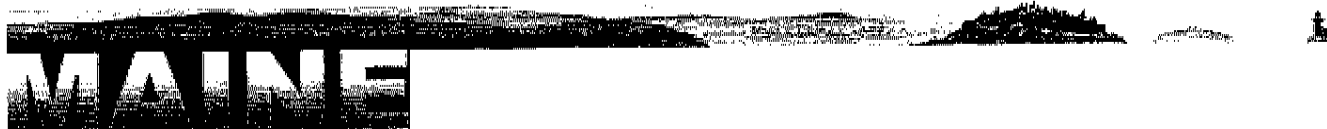
What would you like to do with this report?

- Amend Report
- View/Print Report

- Return to Home Page

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CHLORINE CHEMISTRY

Lobbyist: Ms. Debra A. Hart

Date Report Filed: 6/22/2005 12:35:08 PM

Monthly Report -- Short Form

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HANNAFORD BROTHERS

Lobbyist: Ms. Debra A. Hart

Date Report Filed: 6/22/2005 12:33:25 PM

Monthly Report -- Long Form

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THE WINE INSTITUTE

Lobbyist: Ms. Debra A Hart

Date Report Filed: 6/22/2005 12:41:21 PM

Monthly Report -- Long Form

What would you like to do with this report?

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VFW DEERING MEMORIAL

Lobbyist: Ms. Debra A. Hart

Date Report Filed: 6/22/2005 12:43:24 PM

Monthly Report -- Short Form

What would you like to do with this report?

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- Return to Home Page

Agenda

Item #7



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

July 6, 2005

FINAL NOTICE

Mr. Matthew Gagnon
73 State Street
Brewer, ME 04412

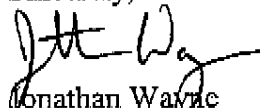
Dear Mr. Gagnon:

At the April 8th meeting, the Commission determined that a penalty of \$150 is owed for the late filing of the 6-Day Pre-General campaign finance report. According to our records, you have yet to pay the penalty. Under Title 21-A M.R.S.A. §1020(10), the Ethics Commission is required to refer to the Maine Attorney General all candidates owing a penalty for more than 30 days so that the Attorney General may begin collection procedures.

Therefore, at their meeting on July 13, 2005 at 9:00 a.m., the Commission members will determine whether to refer you to the Attorney General for collection of the penalty. If you wish to argue against the referral, you are welcome to attend the meeting and/or submit a letter to the Commission staff by mail or fax (287-6775) no later than Monday, July 11. The meeting will take place at our office at 242 State Street in Augusta.

If you have any questions regarding this matter, please telephone the Candidate Registrar, Nathaniel Brown, at 287-7652. Thank you.

Sincerely,


Jonathan Wayne
Executive Director



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

April 12, 2004

Matthew Gagnon
73 State Street, Apt. 1
Brewer, ME 04412

Dear Mr. Gagnon:

At its meeting on April 8, the Commission on Governmental Ethics and Election Practices considered your late submission of the campaign finance report due October 27, 2004. The Commission considered your request for a waiver of the penalty, noted that mitigating circumstances were present in the late filing, and assessed a final penalty of \$150.00.

Please submit to the Commission a check in the amount of \$150 payable to "Treasurer, State of Maine" at the address shown above within 30 days of the date of this letter. If you have any questions concerning this, please call me at 287-4179. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Wayne".

Jonathan Wayne
Executive Director



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

February 25, 2005

FINAL NOTICE

Mr. Matthew Gagnon
103 Fourth Street Apt 2
Old Town, ME 04468

Dear Mr. Gagnon:


In the attached letter, the Ethics Commission staff notified you of its preliminary determination that a penalty of \$1,800.00 was owed for the late filing of the 6-Day Pre-General campaign finance report. You have not paid the penalty or requested a waiver of the penalty by the members of the Commission. Under Title 21-A M.R.S.A. §1020(10), the Ethics Commission is required to refer to the Maine Attorney General (AG) all candidates owing a penalty for more than 30 days so that the AG may begin collection procedures.

Therefore, at their meeting on March 9, 2005 at 9:00 a.m., the Commission members will determine whether to refer you to the Attorney General for collection of the penalty. If you wish to argue against the referral, you are welcome to attend the meeting and/or submit a brief letter to the Commission staff by mail or fax (287-6775) no later than Wednesday, March 2. The meeting will take place at our office at 242 State Street in Augusta.

Also, if you would like a waiver of the penalty, you may request a waiver by faxing a written request to me no later than Wednesday, March 2. The Commission members would decide on the waiver request at the March 9 meeting. The request can be in the form of a brief letter addressed to me stating the reasons why the report was late and why a waiver should be granted. The letter may be faxed to 287-6775.

If you have any questions regarding this matter or if you believe that the report was filed on time or the penalty was paid, please telephone Commission Assistant Nat Brown at 287-4179. Thank you.

Sincerely,


Jonathan Wayne
Executive Director

Enclosure: Original penalty notice



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

January 18, 2005

BY CERTIFIED MAIL AND FIRST CLASS U.S. MAIL

Mr. Matthew Gagnon
103 Fourth Street
Old Town, ME 04468

Dear Mr. Gagnon:

Re: Late 6-Day Pre-General Campaign Finance Report - Due 10/27/2004

You filed a 6-Day Pre-General campaign finance report on 1/10/2005. Maine State Election Law (21-A M.R.S.A. §1020-A(4)) requires that a civil penalty be assessed for the late filing of a report based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the candidate's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report would be \$1800. Please refer to the enclosed penalty matrix for more details on how the penalty was computed. If you agree with this preliminary penalty determination, you may use the enclosed billing statement to pay the penalty.

You may request that the Commission reduce or waive the penalty. Any request for a reduction or waiver must be made within 10 days of your receipt of this notice. (If this notice has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of the certified letter.) Upon receipt of your request, we will schedule the matter to be considered by the Commission at its next meeting and will notify you of the date and time of the meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. The statement must be notarized and contain a full explanation of the reason you filed late. The Commission will notify you of the disposition of your case after its determination.

NOTE: Under 21-A M.R.S.A. §1020-A(2), the Commission may waive penalties for late reports in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: (1) a valid emergency determined by the Commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; (2) an error by the Commission staff; (3) a candidate's failure to receive notice of the filing deadline; or (4) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

Sincerely,

Jonathan Wayne
Executive Director

Enclosure: Penalty Matrix

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

BASIS FOR PENALTIES

21-A M.R.S.A. Section 1020-A(4)

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

- For the first violation, 1%
- For the second violation, 3%
- For the third and each subsequent violation, 5%

A penalty begins to accrue at 5:00 p.m. on the day the report is due.

Example: The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500	Greater amount of the total contributions received or expenditures made during the filing period
<u>X .01</u>	Percent prescribed for first violation
\$25.00	One percent of total contributions
<u>X 2</u>	Number of calendar days late
\$50.00	Total penalty

Your penalty is calculated as follows:

Contributions/Expenditures: \$	800
Percent prescribed:	x .03
	\$ 24
Number of days late:	x 75
Total penalty accrued:	\$ 1800

Any penalty of less than \$5 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

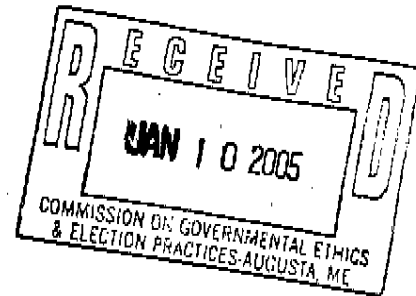
A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

MAXIMUM PENALTIES

21-A M.R.S.A. Section 1020-A(5)

\$5,000 for reports required to be filed 42 days before an election (gubernatorial candidate only),
6 days before an election, 42 days after an election, and for 48-hour reports;
\$1,000 for semiannual reports.

Matthew Gagnon
103 Fourth Street, Apt 2
Old Town, ME 04468



To whom it may concern:

I was recently sent a letter that had stated I had not sent in any reports to the Ethics Commission for the recent election cycle. I have been looking into this, and am very perplexed as to the reason for this. Both my treasurer and I had prepared the reports required, and sent them in.

I can only speculate that either I am at fault, and somehow mistakenly mislabeled the mail I sent to the commission, or the mail handlers lost the outgoing mail (which has occurred in the past). Either way, I send my apologies for an unfortunate misunderstanding, and certainly due to my loss in the election (and complete lack of remaining funds), I request, if possible, understanding in regard to penalty fines.

I have kept my records, but no longer have any forms to file, so I have improvised the 3 reports needed by your office, giving you what I believe is the information I previously had sent and was never received.

I understand that you need 3 reports:


- 42 Day Post Primary Report
- 6 Day Pre-General Report
- 42 Day Post General Report

And as such, in this letter you will find records for each of those periods, both donations (I was a traditional candidate, not a clean elections candidate) and expenses.

If your office requires anything further, please don't hesitate to contact me by mail, or call me at home at 207-827-2756.

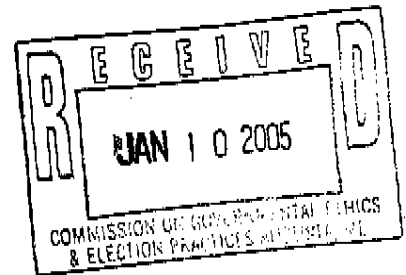
Thank you in advance for your understanding and assistance.

Best Regards,



Matthew Gagnon

42 DAY POST PRIMARY *REPORT*



DONATIONS / INCOME

N/A.....\$0

EXPENSES

N/A.....\$0

I swear that the preceding information is accurate and truthful.

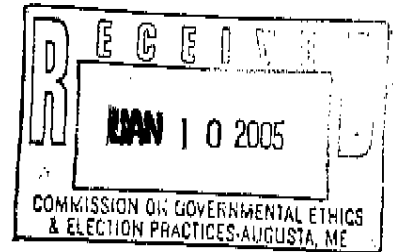
Matthew Gagnon

A handwritten signature in black ink, appearing to read "Matthew Gagnon", with a long horizontal flourish extending to the right.

District 14 Maine House Candidate

004-86-5376

6 DAY PRE GENERAL REPORT



DONATIONS / INCOME

Maine Truck PAC.....\$250
 POB 857, Augusta, ME 04332-0857
 Build Maine PAC.....\$200
 188 Whitten Road, POB 519, Augusta, ME 04332-5319
 Moshee.....\$100
 35 Parkwood Drive #203, Augusta, ME 04330
 Maine Insurance Agents Assn.....\$100
 432 West Avenue, Augusta, ME 04330
 Penobscot County Republican Party.....\$100
 POB 1734, Bangor, ME 04401
 Maine Merchants Association.....\$50
 POB 5060, Augusta, ME 04332-5060

Total.....\$800

EXPENSES

Bank Account Minimum Deposit.....\$30.00
 Requirement to start bank account (recoverable)
 Victory Source.....\$165.83
 Bumper Sticker Expense
 Check #1000
 Victory Source.....\$495.10
 Road Sign Expense
 Check #1001
 Matthew Gagnon.....\$55.50
 Repayment of Postage Expense
 Check #1002
 GoDaddy.com.....\$9.95
 Bumper Sticker Expense
 Online Debit
 Cash.....\$37.00
 Postage Expense

Total.....\$793.38

REMAINING BALANCE

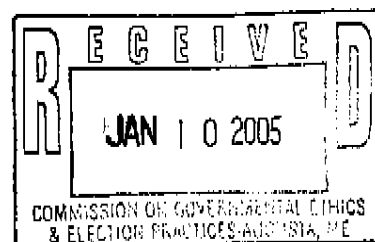
Total.....\$6.62
 Remaining Campaign Funds

I swear that the preceding information is accurate and truthful.

Matthew Gagnon

District 14 Maine House Candidate
 004-86-5376

42 DAY POST GENERAL REPORT

**PREVIOUS BALANCE**

Total.....\$6.62

DONATIONS / INCOME

N/A.....\$0

EXPENSES

N/A.....\$0

FINAL BALANCE

Total.....\$6.62

I swear that the preceding information is accurate and thruthful.

Matthew Gagnon

A handwritten signature in black ink, appearing to read "Matthew Gagnon", with a long horizontal flourish extending to the right.

District 14 Maine House Candidate

004-86-5376

Agenda Item #8



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

July 6, 2005

FINAL NOTICE

Mr. John Linscott
743 Stevens Avenue
Portland, ME 04103

Dear Mr. Linscott:

At the June 8th meeting, the Commission determined that a civil penalty of \$35.72 is owed for violating the Maine Clean Election Act by contributing personal funds to your campaign and spending those funds. According to our records, you have yet to pay the penalty. Under Title 21-A M.R.S.A. §1020(10), the Ethics Commission is required to refer to the Maine Attorney General all candidates owing a penalty for more than 30 days so that the Attorney General may begin collection procedures.

Therefore, at their meeting on July 13, 2005 at 9:00 a.m., the Commission members will determine whether to refer you to the Attorney General for collection of the penalty. The Commission is in receipt of your letter dated June 14, 2005, in which you state that you do not intend to pay the penalty, and the Commission members will consider the June 14 letter at the July 13 meeting. If you wish to argue against the referral, you are welcome to attend the meeting and/or submit a further letter to the Commission staff by mail or fax (287-6775) no later than Monday, July 11. The meeting will take place at our office at 242 State Street in Augusta.

If you have any questions regarding this matter, please telephone me at 287-6219. Thank you.

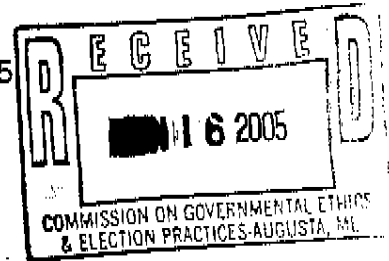
Sincerely,

A handwritten signature in dark ink, appearing to read "Jonathan Wayne".

Jonathan Wayne
Executive Director

Jonathan Wayne
Commission on Governmental Ethics
And Election Practices
135 State House Station
Augusta, Maine 04333-0135

June 14, 2005

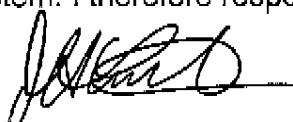


In response to your letter regarding the matter of \$ 35.72 I have no intention of paying that "fine". As was related to your committee ,I had to use \$ 50 of my own money to open a checking account in order to receive electronic deposits from the Clean Election Fund. During the campaign I kept careful records of all deposits and expenditures. The "double entry" system of bookkeeping did not make that task any easier. I saw no way by which I could extract my original \$ 50 from the account, as there was no expenditure to justify it. I returned a good sum of money when the account was reconciled and under the double-entry system I returned to the fund \$14.28 (which was really my own money).

If I were to send the fund \$ 35.72 I would then have paid \$50 plus my own original \$50 for a total loss to me of \$100. I am not about to do that.

In light of all the abuses by candidates (noted in the press) and that I conducted my campaign honestly and with a minimum of expenditures I feel that I am being unjustly abused by the system. I therefore respectfully refuse payment of your "civil penalty".

Very truly yours,


John H. Linscott
743 Stevens Avenue
Portland, Maine 04103



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

June 8, 2005

John H. Linscott
743 Stevens Avenue
Portland, Maine 04103

Dear Mr. Linscott:

At its meeting today, the Maine Commission on Governmental Ethics and Election Practices determined that you contributed \$35.72 in personal funds to your campaign in violation of 21-A M.R.S.A. §1125(6). I presented to the Commission members my understanding that you had acted completely in good faith, and had deposited \$50 of your personal funds to open a campaign checking account which you partially spent.

The Commission members assessed a civil penalty in the amount of \$35.72 for the violation. Please submit to the Commission a check in that amount payable to "Treasurer, State of Maine" at the address shown above within 30 days of the date of this letter. Please call me at 287-6219 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "JH Wayne", written over a horizontal line.

Jonathan Wayne
Executive Director



STATE OF MAINE
 COMMISSION ON GOVERNMENTAL ETHICS
 AND ELECTION PRACTICES
 135 STATE HOUSE STATION
 AUGUSTA, MAINE
 04333-0135

May 25, 2005

John H. Linscott
 743 Stevens Avenue
 Portland, Maine 04103

Dear Mr. Linscott:

The Maine Commission on Governmental Ethics and Election Practices is completing its review of the campaigns of Maine Clean Election Act candidates. Based on its reviews of your campaign finance reports, the Commission staff has found that you contributed \$35.72 in personal funds to cover campaign expenses. This appears to be a violation of 21-A M.R.S.A. §1125(6). Under that provision, a Maine Clean Election Act candidate may not accept contributions and must limit campaign expenditures to revenues received from the Maine Clean Election Fund.

If you disagree with this preliminary staff finding, please telephone me or submit any written information rebutting the finding no later than May 31. The members of the Ethics Commission are meeting at June 8, 2005 at 9:00 a.m. **The staff of the Commission intends to recommend at the June 8 meeting that the Commission determine that you contributed \$35.72 in personal funds to your campaign in violation of 21-A M.R.S.A. §1125(6), and that the Commission assess a civil penalty of \$35.72 for the violation.**

The staff's preliminary finding that you contributed \$35.72 is based on your total reported campaign expenditures of \$6,612.02 and the following receipts which you were authorized to spend.

\$15.30	seed money contributions
\$456.00	initial distribution for primary election
\$4,032	initial distribution for general election
\$2,073	matching funds for the general election
\$6,576.30	Total

The finding is consistent with the attached checkbook register showing that you put in \$50 of personal funds to set up the account and have an ending balance of \$14.28.

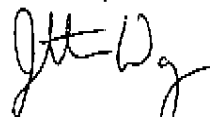
John H. Linscott

- 2 -

May 25, 2005

Please telephone me at 287-4179 if you would like to discuss this matter. I will be out of the office for personal reasons on May 26 and the morning of May 27, and May 30 is a State holiday. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Wayne', written in a cursive style.

Jonathan Wayne
Executive Director

totalTo
Set up
file

■ AD-Automatic Deposit ■ AP-Automatic Payment ■ ATM-Teller Machine ■ DC-Debit Card ■ T-Tax Deductible ■ TT-Telephone Transfer

NUMBER OR CODE	DATE	TRANSACTION DESCRIPTION	PAYMENT AMOUNT	✓	FEE	DEPOSIT AMOUNT	\$ BALANCE
	5/13	STATE BC MAINE	\$			\$452.00	452.00
							452.00
1002	5/13	THE SIGNERY	105.00	0			105.00
							351.00
		JHL-TOGETHER ACT				50.00	50.00
							401.00
1003	5/17	POSTMASTER PREFERRED	25.00	1			25.00
		Franklin County					376.00
1004	5/18	STAPLET	8.50	0			8.51
							367.49
1005	6/1	Staples	17.84	✓			17.84
							349.65
1006	6/3	GAGNE & SON	14.70	✓			14.70

33495

- 317.49

■ AD-Automatic Deposit ■ AP-Automatic Payment ■ ATM-Teller Machine ■ DC-Debit Card ■ T-Tax Deductible ■ TT-Telephone Transfer

NUMBER OR CODE	DATE	TRANSACTION DESCRIPTION	PAYMENT AMOUNT	✓	FEE	DEPOSIT AMOUNT	\$ BALANCE
		REAL BALANCE					256 17
	10/12	MF				842 -	842 -
							4403 19
1019	10/20	SPECTRUM	2629 14			28)	2629 14
							1774 05
1025	10/20	SPECTRUM	1023 69				1023 69
							750 36
1021	10/22	FORECAST	397 -	✓			397 -
							357 36
	10/25	MF				1064 -	1064 -
							1415 36
	10/26	MF				167	167 -
							1583 36
1022	10/28	STAPLE - CHAZ CIVILIAN	305 49	✓			305 49
		PRINTING - DALLAS STATION					1276 37
1023	10/28	HENRY BIENBAL	1475 -	✓			475 -
		CAMPION PRINTING					811 67
1024	10/28	U.S.P.S	557 59	✓			557 59
							244 28
1025	10/30	CHAZ CIVILIAN	230 -	✓			230 -
							14 28

PROTECT YOUR ACCOUNT - USE CHECKS IN SEQUENTIAL ORDER. RECONCILE STATEMENTS PROMPTLY.

700.36

(50) = (35.72)

Bal 14.28
 Dep. to open A/C <50. ->
<35.72>

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
135 State House Station, Augusta Maine 04333-0135
Office: 242 State Street, Augusta, Maine
Tel: (207)-287-4179 Fax: (207)-287-6775

CANDIDATE CAMPAIGN FINANCE REPORT 2004

(Please Complete ALL Entries)

Name of CANDIDATE JOHN H. LINS COTT

Mailing address 743 STEVENS AVENUE

Check if changed since previous report

City, State Zip Code Portland ME 04103

Telephone number (207)878-8427 Fax E-mail jlinscott@yahoo.com

Name of Candidate's Committee, if any

Election Year 2004 Office Sought REPRESENTATIVE District Number 116 County -None-

Name of TREASURER JOHN H. LINS COTT

Mailing address 743 STEVENS AVENUE

Check if changed since previous report

City, State Zip Code PORTLAND ME 04103

Telephone number (207)878-8427 Fax E-mail

Report for : 42 DAY POST-GENERAL REPORT

I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

SIGNATURE ON FILE

12/16/2004

Treasurer's Signature

Date

SIGNATURE ON FILE

12/16/2004

Candidate's Signature

Date

Date Submitted

SCHEDULE G SUMMARY SECTION

Page 1

NOTE: Please read the instructions for completing this Schedule carefully. Complete other applicable schedules before completing this schedule. Enter column 3 figures from last report in column 1 below. Enter column 2 figures for this reporting period as indicated for each line. Add columns 1 and 2 for each row and enter the sum in column 3. If this is your first report, leave column 1 blank; amounts in columns 2 and 3 will be the same.

RECEIPTS

**COLUMN 1
COPY FROM
COLUMN 3
LAST REPORT**

**COLUMN 2
SCHEDULES A-F
TOTALS THIS
REPORT PERIOD**

**COLUMN 3
CAMPAIGN
TOTALS TO DATE
(add cols. 1 & 2)**

1. ACCOUNT BALANCE BROUGHT FORWARD FROM PREVIOUS CAMPAIGN
(Line 1 applies only if transferring surplus funds from a previous campaign to this new campaign)

\$0.00		\$0.00
--------	--	--------

2. CONTRIBUTIONS WITHOUT LOAN

(a) More than \$50 cash each -- All Key Codes

\$5,350.00	From Schedule A (Summary) \$1,231.00	\$6,561.00
------------	---	------------

(b) Aggregate \$50 or less cash each

\$15.30	From Schedule A (Summary) \$0.00	\$15.30
---------	-------------------------------------	---------

(c) In-kind more than \$50 each -- All Key Codes

\$0.00	From Schedule A - I (Summary) \$0.00	\$0.00
--------	---	--------

(d) Aggregate In-kind \$50 or less each

\$0.00	From Schedule A - I (Summary) \$0.00	\$0.00
--------	---	--------

(e) TOTAL CONTRIBUTIONS WITHOUT LOANS
[add lines 2(A) -(D)]

\$5,345.30	\$1,231.00	\$6,576.30
------------	------------	------------

3. LOANS

(a) Candidate and Candidate's Spouse

	From Schedule C, line 1, col.2 \$0.00	
--	--	--

(b) Other Sources

	From Schedule C, line 2 col.2 \$0.00	
--	---	--

(c) Financial Institutions

	From Schedule C, line 3 col.2 \$0.00	
--	---	--

(d) TOTAL LOANS [add lines 3(a)-(c)]

	\$0.00	
--	--------	--

4. SALE OF CAMPAIGN EQUIPMENT/PROPERTY

\$0.00	From Schedule F, line 2, col.1 \$0.00	\$0.00
--------	--	--------

5. OTHER RECEIPTS

(interest, etc. not included elsewhere)

\$0.00	\$0.00	\$0.00
--------	--------	--------

6. TOTAL RECEIPTS WITH LOANS
[add lines 1, 2(e), 3(d), 4 & 5]

\$5,345.30	\$1,231.00	\$6,576.30
------------	------------	------------

Time

Date Submitted

SCHEDULE G SUMMARY SECTION

Page 2

EXPENDITURES

7. EXPENDITURES WITHOUT LOAN REPAYMENTS

- (a) General Operations
- (b) Advertising
- (c) Printing/Postage, etc.
- (d) Salaries & Other Compensation
- (e) Other
- (f) In-kind more than \$50 each
- (g) Aggregate in-kind \$50 or less each
- (h) **TOTAL EXPENDITURES WITHOUT LOAN REPAYMENTS** [add lines 7(a)-(g)]

<u>COLUMN 1</u> FROM COLUMN 3 LAST REPORT	<u>COLUMN 2</u> TOTALS THIS REPORT PERIOD	<u>COLUMN 3</u> CAMPAIGN TOTALS TO DATE (add cols. 1 & 2)
\$0.00	From Schedule B, line 3a \$0.00	\$0.00
\$0.00	From Schedule B, line 3b \$399.00	\$399.00
\$4,524.94	From Schedule B, line 3c \$1,568.08	\$6,093.02
\$0.00	From Schedule B, line 3d \$0.00	\$0.00
\$120.00	From Schedule B, line 3e \$0.00	\$120.00
\$0.00	From Schedule A-1 (Summary) \$0.00	\$0.00
\$0.00	From Schedule A-1 (Summary) \$0.00	\$0.00
\$4,644.94	\$1,967.08	\$6,612.02

8. LOAN REPAYMENTS

- (a) Candidate and Candidate's Spouse
- (b) Other Sources
- (c) Financial Institutions
- (d) **TOTAL LOAN REPAYMENTS**
[add lines 8(a) - (c)]

	From Schedule C, line 1, col 1 \$0.00	
	From Schedule C, line 2, col 1 \$0.00	
	From Schedule C, line 3, col 1 \$0.00	
	\$0.00	

TOTAL EXPENDITURES WITH LOAN REPAYMENTS [add lines 7(h) & 8(d)]

\$4,644.94	\$1,967.08	\$6,612.02
------------	------------	------------

9. ACCOUNT BALANCE (subtract line 9 from line 6)

\$700.36	(\$736.08)	(\$35.72)
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Agenda Item #9



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

July 6, 2005

FINAL NOTICE

Mr. Arthur Keenan
146 Morancy Road
Sullivan, ME 04664

Dear Mr. Keenan:

At the May 10th meeting, the Commission determined that a penalty of \$500 is owed for the late filing of the 42-Day Post-General campaign finance report. According to our records, you have yet to pay the penalty. Under Title 21-A M.R.S.A. §1020(10), the Ethics Commission is required to refer to the Maine Attorney General all candidates owing a penalty for more than 30 days so that the Attorney General may begin collection procedures.

Therefore, at their meeting on July 13, 2005 at 9:00 a.m., the Commission members will determine whether to refer you to the Attorney General for collection of the penalty. If you wish to argue against the referral, you are welcome to attend the meeting and/or submit a letter to the Commission staff by mail or fax (287-6775) no later than Monday, July 11. The meeting will take place at our office at 242 State Street in Augusta.

If you have any questions regarding this matter, please telephone the Candidate Registrar, Nathaniel Brown, at 287-7652. Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jonathan Wayne".

Jonathan Wayne
Executive Director

cc: Mary Anne Keenan



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

May 12, 2005

Arthur Keenan
146 Morancy Road
Sullivan, ME 04664

Dear Mr. Keenan:

At its meeting on May 11, the Commission on Governmental Ethics and Election Practices considered your late submission of the campaign finance report due December 14, 2004. The Commission considered your request for a waiver of the penalty, noted the mitigating circumstances in your letter, and assessed a final penalty of \$500.

Please submit to the Commission a check in the amount of \$500 payable to "Treasurer, State of Maine" at the address shown above within 30 days of the date of this letter. The Commission would accept an initial payment and an agreement to pay the amount within six months, upon certain conditions. If you have any questions concerning this, please call me at 287-4179. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Wayne".

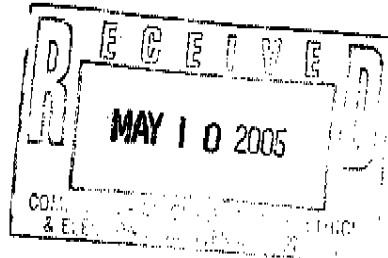
Jonathan Wayne
Executive Director

cc: Mary Anne Keenan

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THOMASKEEN

PAGE 02



May 10, 2005

State of Maine Commission On Governmental Ethics and Election Practices:

First and foremost I would like to apologize for filing our final financial report late. As you know, we have always filed our reports in a timely manner. I truly thought that we had filed the last report.

Arthur Keenan nor I ever received and mail correspondence or phone calls in regard to the final report being late until April 13, 2005. Jonathan Wayne admitted to me that the commission had Arthur's address incorrect and I have no idea why I was never sent anything until April. As soon as I received the notice that we hadn't filed, I sent the report right out (April 14, 2005).

I am asking for a full waiver of the late penalty fees in the amount of \$2,169.64 based on our past timely responses in filing our reports and the fact that we never received any of the notices that we were supposed to get wether by mail or phone. Also, Arthur cannot afford these penalties as his work right now is sporadic and he has had to depend on MaineCare for assistance. I cannot afford the penalty fees either as my family of five relies on MaineCare, Food Stamps and Heap for assistance.

I hope that you will consider a full waiver of the penalty fees based on this letter. Arthur nor I could make the trip to Augusta as we cannot afford to go.

Thank You,

Mary Anne Keenan



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

April 14, 2005

Mr. Arthur Keenan
146 Morancy Road
Sullivan, ME 04664

BY CERTIFIED MAIL

Dear Mr. Keenan:

RE: Late 42-Day Post-General Campaign Finance Report Due 12/14/2004.

You filed a 42-Day Post General campaign finance report on 4/14/2005. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the candidate's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report would be \$2,169.64. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign its receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

NOTE: The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) a valid emergency determined by the Commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or (4) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

The Maine Clean Election Act requires all revenues distributed to certified candidates from the fund to be used for campaign-related purposes. Commission guidelines regarding permissible campaign-related expenditures do not include the payment of a penalty as a permissible expenditure.

Sincerely,

Nathaniel Brown
Candidate Registrar

cc: Mary Anne Keenan



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135
April 14, 2005

Mr. Arthur Keenan
146 Morancy Road
Sullivan, ME 04664

The Commission staff has made a preliminary determination, based upon application of the statutory formula, that a penalty of \$2,169.64 applies for the late filing of your 42-Day Post-General campaign finance report. If you agree with this determination, please make your check or money order in that amount payable to "Treasurer, State of Maine," and send it, along with the bottom half of this letter, to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333, within 30 days of the date noted above. Please see the instructions included in the attached letter if you would like the Commission to make a formal determination of any penalty to be assessed in this case.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay the full amount of any penalty. Please direct any questions you may have about this matter to Nathaniel Brown at 287-4179.

Cut Along Dotted Line

For Office Use Only:
Account: CGEEP
Fund: 014 Approp: 02

To Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

From: Mr. Arthur Keenan

RE: Penalty for late filing of 42-Day Post-General Campaign Finance Report

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

Please Make Check or Money Order Payable to Treasurer, State of Maine

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

BASIS FOR PENALTIES

21-A M.R.S.A. Section 1020-A(4)

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%

For the second violation, 3%

For the third and each subsequent violation, 5%

A penalty begins to accrue at 5:00 p.m. on the day the report is due.

Example: The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500 Greater amount of the total contributions received or expenditures made during the filing period

X .01 Percent prescribed for first violation

\$25.00 One percent of total contributions

X 2 Number of calendar days late

\$50.00 Total penalty

Your penalty is calculated as follows:

Contributions/Expenditures: \$ 1793.09

Percent prescribed: x .01
\$ 17.93

Number of days late: x 121

Total penalty accrued: \$ 2169.64

42-Day Post-General

Any penalty of less than \$5 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

MAXIMUM PENALTIES

21-A M.R.S.A. Section 1020-A(5)

\$5,000 for reports required to be filed 42 days before an election (gubernatorial candidate only),
6 days before an election, 42 days after an election, and for 48-hour reports;
\$1,000 for semiannual reports.

